

W2006-01081-CEA-23-CD  
IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

THE THIRTIETH JUDICIAL DISTRICT

STATE OF TENNESSEE

ORIGINAL

vs.

Case No. 05-03038

VERN BRASWELL,

Defendant.

876-06

Clears

TRANSCRIPT OF EVIDENCE

Volumes 10 of 11 Volumes

DECEMBER 5, 2005

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:

BETSY CARNESALE AND AMY WEIRICH  
Assistant District Attorneys General  
District Attorney General's Office  
201 Poplar Avenue - Third Floor  
Memphis, TN 38103

FOR THE DEFENDANT:

J. BAILEY AND WALTER BAILEY  
Attorneys at Law  
100 North Main - Suite 3002  
Memphis, TN 38103

FILED

NOV 2 2006

Reported by:  
Katherine Knowles  
Court Reporter

Vol. 10

Clerk of the Court

TABLE OF CONTENTSVOLUME ONEPAGE

Appearances 1

Table of Contents 2

List of Exhibits 9

Style and Caption 13

**Monday, December 5, 2005**

Pre-trial Motions 14

Voir Dire Examination and Jury Selection 25

**(VOLUME TWO)**

**Tuesday, December 6, 2005**

**VERN BRASWELL**

Voir Dire Examination (By Mr. J. Bailey) 185

Jury Sworn 187

Reading of Indictment and Entry of Plea 187

Opening Statements (By Ms. Weirich) 187

Opening Statements (By Mr. W. Bailey) 192

**STATE'S PROOF**

**PEARLINE WASHBURN**

Direct Examination (By Ms. Weirich) 199

**ANGELA SNYDER**

Direct Examination (By Ms. Weirich) 227

**JESSICA GREEN**

Direct Examination (By Ms. Weirich) 236

TABLE OF CONTENTSVOLUME ONEPAGE**ROOSEVELT COLEMAN**

Direct Examination (By Ms. Weirich)	243
Cross-Examination (By Mr. J. Bailey)	247

**LIEUTENANT JACKSON**

Direct Examination (By Ms. Carnesale)	250
Cross-Examination (By Mr. J. Bailey)	264
Redirect Examination (By Ms. Carnesale)	270

**BABA TANZY**

Direct Examination (By Ms. Carnesale)	271
Cross-Examination (By Mr. W. Bailey)	283

**MATT HAMM**

Direct Examination (By Ms. Carnesale)	285
Cross-Examination (By Mr. W. Bailey)	293
Redirect Examination (By Ms. Carnesale)	295

**OFFICER GALLOWAY**

Direct Examination (By Ms. Weirich)	296
Cross-Examination (By Mr. J. Bailey)	308

**SERGEANT KJELLIN**

Direct Examination (By Ms. Carnesale)	313
Cross-Examination (By Mr. J. Bailey)	323
Redirect Examination (By Ms. Carnesale)	328

**SERGEANT MERRITT**

Direct Examination (By Ms. Weirich)	328
-------------------------------------	-----

**TABLE OF CONTENTS****VOLUME ONE****PAGE****LIEUTENANT MILLER**

Direct Examination (By Ms. Weirich)	362
Cross-Examination (By Mr. W. Bailey)	368
Redirect Examination (By Ms. Weirich)	369

**(VOLUME THREE)****Wednesday, December 7, 2005****DARRELL BURTON**

Direct Examination (By Ms. Carnesale)	384
Cross-Examination (By Mr. J. Bailey)	389

**JERRY BROWN**

Direct Examination (By Ms. Carnesale)	390
Cross-Examination (By Mr. J. Bailey)	395

**BENJANETTE STURDEVANT**

Direct Examination (By Ms. Carnesale)	396
Cross-Examination (By Mr. J. Bailey)	403

**LIEUTENANT MITCHELL**

Direct Examination (By Ms. Carnesale)	407
Cross-Examination (By Mr. J. Bailey)	414

Jury-Out Hearing	419
------------------	-----

**OFFICER FAIR**

Direct Examination (By Ms. Weirich)	424
Cross-Examination (By Mr. W. Bailey)	432
Redirect Examination (By Ms. Weirich)	434

TABLE OF CONTENTSVOLUME ONEPAGE**CAROLYN CHAMBERS**

Direct Examination (By Ms. Weirich)	435
-------------------------------------	-----

**OFFICER WALLS**

Direct Examination (By Ms. Carnesale)	444
---------------------------------------	-----

**Jury-Out Hearing****OFFICER WALLS**

Direct Examination (By Ms. Carnesale)	448
---------------------------------------	-----

Cross-Examination (By Mr. J. Bailey)	450
--------------------------------------	-----

**OFFICER WALLS**

Direct Examination Continued (By Ms. Carnesale)	451
---	-----

Cross-Examination (By Mr. W. Bailey)	455
--------------------------------------	-----

**WILLIAM MANGUM**

Direct Examination (By Ms. Weirich)	457
-------------------------------------	-----

Cross-Examination (By Mr. J. Bailey)	468
--------------------------------------	-----

Redirect Examination (By Ms. Weirich)	475
---------------------------------------	-----

Recross Examination (By Mr. J. Bailey)	476
--	-----

**DOCTOR CARTER**

Direct Examination (By Ms. Carnesale)	478
---------------------------------------	-----

Cross-Examination (By Mr. W. Bailey)	518
--------------------------------------	-----

Redirect Examination (By Ms. Carnesale)	542
---	-----

**(VOLUME FOUR)****Thursday, December 8, 2005****KRISTIE WOODS**

Direct Examination (By Ms. Weirich)	563
-------------------------------------	-----

Cross-Examination (By Mr. J. Bailey)	618
--------------------------------------	-----

Redirect Examination (By Ms. Weirich)	629
---------------------------------------	-----

TABLE OF CONTENTSVOLUME ONEPAGE

## Jury-Out Hearing

**VERA COLE**

Direct Examination (By Ms. Weirich)	633
Cross-Examination (By Mr. W. Bailey)	637

**MAGRA HARDEN**

Direct Examination (By Ms. Weirich)	640
Cross-Examination (By Mr. W. Bailey)	645

Court's Ruling	653
----------------	-----

**KRISTIE WOODS**

Redirect Examination Continued (By Ms. Weirich)	658
Recross Examination (By Mr. J. Bailey)	660
Further Redirect Examination (By Ms. Weirich)	662

**SHERONDA SMITH**

Direct Examination (By Ms. Carnesale)	667
Cross-Examination (By Mr. J. Bailey)	678

**VERA COLE**

Direct Examination (By Ms. Weirich)	682
Cross-Examination (By Mr. J. Bailey)	690
Redirect Examination (By Ms. Weirich)	693
Recross Examination (By Mr. J. Bailey)	695

**MAGRA HARDEN**

Direct Examination (By Ms. Weirich)	698
Cross-Examination (By Mr. W. Bailey)	703

Motion for Judgment of Acquittal	706
----------------------------------	-----

1	<u>TABLE OF CONTENTS</u>	
2	<u>VOLUME ONE</u>	
3		<u>PAGE</u>
4	State Rests	709
5	(VOLUME FIVE)	
6	<u>DEFENSE'S PROOF</u>	
7	<b>GLEN WRIGHT</b>	
8	Direct Examination (By Mr. J. Bailey)	722
9	Cross-Examination (By Ms. Weirich)	729
10	<b>VERN BRASWELL</b>	
11	Direct Examination (By Mr. J. Bailey)	730
12	Cross-Examination (By Ms. Weirich)	788
13	<b>DOCTOR SCHWARTZ</b>	
14	Direct Examination (By Mr. W. Bailey)	816
15	Jury-Out Hearing	
16	<b>DOCTOR SCHWARTZ</b>	
17	Direct Examination (By Mr. W. Bailey)	826
18	Cross-Examination (By Ms. Carnesale)	827
19	Redirect Examination (By Mr. W. Bailey)	829
20	Court's Ruling	835
21	<b>DOCTOR SCHWARTZ</b>	
22	Direct Examination Continued (By Mr. W. Bailey)	838
23	Jury-Out Hearing	843
24	<b>DOCTOR SCHWARTZ</b>	
25	Direct Examination Continued (By Mr. W. Bailey)	846
	Cross-Examination (By Ms. Carnesale)	847
	Redirect Examination (By Mr. W. Bailey)	858
	Recross Examination (By Ms. Carnesale)	858

1	<u>TABLE OF CONTENTS</u>	
2	<u>VOLUME ONE</u>	
3		<u>PAGE</u>
4	<b>(VOLUME SIX)</b>	
5	<b>Friday, December 9, 2005</b>	
6	Motion for Judgment of Acquittal	872
7	Jury Charge Discussion	872
8	Defense Rests	873
9	Closing Arguments (By Ms. Carnesale)	873
10	Closing Arguments (By Mr. W. Bailey)	884
11	Closing Arguments (By Ms. Weirich)	899
12	Jury Charge	926
13	Alternates Excused	941
14	Jury Questions	942
15	Verdict	945
16		
17	Certificate of Reporter	948
18		
19		
20		
21		
22		
23		
24		
25		



1

INDEX OF EXHIBITS

2

3

<u>NO.</u>	<u>STATE/DEFENSE</u>	<u>ID/EVIDENCE</u>	<u>TO/DESCRIPTION</u>	<u>PAGE</u>
------------	----------------------	--------------------	-----------------------	-------------

4

1	State	Evidence	P. Washburn, photo	202
---	-------	----------	--------------------	-----

5

2	State	Evidence	P. Washburn, photo	207
---	-------	----------	--------------------	-----

6

3	State	ID	P. Washburn, photos	312
---	-------	----	---------------------	-----

7

3	State	Evidence	Officer Walls, photos	452
---	-------	----------	-----------------------	-----

8

4	State	Evidence	P. Washburn,	217
---	-------	----------	--------------	-----

9

check and letter

10

5	State	Evidence	P. Washburn, money	218
---	-------	----------	--------------------	-----

11

6	State	ID	P. Washburn, note	218
---	-------	----	-------------------	-----

12

6	State	Evidence	K. Woods, note	617
---	-------	----------	----------------	-----

13

7	State	ID	P. Washburn, document	219
---	-------	----	-----------------------	-----

14

7	State	Evidence	W. Mangum, document	467
---	-------	----------	---------------------	-----

15

8	State	ID	P. Washburn, document	219
---	-------	----	-----------------------	-----

16

8	State	Evidence	W. Mangum, document	466
---	-------	----------	---------------------	-----

17

9	State	ID	P. Washburn, document	219
---	-------	----	-----------------------	-----

18

9	State	ID	W. Mangum, document	466
---	-------	----	---------------------	-----

19

10	State	Evidence	A. Snyder, photo	235
----	-------	----------	------------------	-----

20

11	State	Evidence	J. Green, tape	241
----	-------	----------	----------------	-----

21

12	State	Evidence	R. Coleman, report	245
----	-------	----------	--------------------	-----

22

13	State	Evidence	Lt. Jackson, sketch	259
----	-------	----------	---------------------	-----

23

14	State	Evidence	B. Tanzy, photo	278
----	-------	----------	-----------------	-----

24

15	State	Evidence	B. Tanzy, photo	279
----	-------	----------	-----------------	-----

25

1 INDEX OF EXHIBITS

2					
3	<u>NO.</u>	<u>STATE/DEFENSE</u>	<u>ID/EVIDENCE</u>	<u>TO/DESCRIPTION</u>	<u>PAGE</u>
4	16	State	Evidence	Officer Galloway,	298
5				crime scene sketch	
6	17	State	Evidence	Officer Galloway,	304
7				photo	
8	18	State	Evidence	Officer Galloway,	304
9				photo	
10	19	State	Evidence	Officer Galloway,	304
11				photo	
12	20	State	Evidence	Officer Galloway,	304
13				photo	
14	21	State	Evidence	Officer Galloway,	304
15				photo	
16	22	State	Evidence	Officer Galloway,	304
17				photo	
18	23	State	Evidence	Officer Galloway,	304
19				photo	
20	24	State	Evidence	Officer Galloway,	304
21				photo	
22	25	State	Evidence	Officer Galloway,	308
23				two bottles	
24	26	State	Evidence	Sgt. Merritt,	335
25				Advice of Rights form	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25INDEX OF EXHIBITS

<u>NO.</u>	<u>STATE/DEFENSE</u>	<u>ID/EVIDENCE</u>	<u>TO/DESCRIPTION</u>	<u>PAGE</u>
27	State	Evidence	Sgt. Merritt, CD	358
28	State	Evidence	Lt. Miller, statement	365
29	State	Evidence	J. Brown, phone record	391
30	State	Evidence	B. Sturdevant, phone records	397
31	State	Evidence	Dr. Carter, photo	483
32	State	Evidence	Dr. Carter, photo	485
33	State	Evidence	Dr. Carter, photos	489
34	State	Evidence	Dr. Carter, photos	489
35	State	Evidence	Dr. Carter, photo	491
36	State	Evidence	Dr. Carter, necklace	492
37	State	Evidence	Dr. Carter, photo	495
38	State	Evidence	Dr. Carter, photo	497
39	State	Evidence	Dr. Carter, photo	498
40	State	Evidence	Dr. Carter, photo	499
41	State	Evidence	Dr. Carter, photo	503
42	State	Evidence	Dr. Carter, photo	504
43	State	Evidence	Dr. Carter, photo	511
44	State	Evidence	Dr. Carter, photo	513
45	Defense	Evidence	Dr. Carter, photo	525
46	State	ID	K. Woods, earrings	618
46	State	Evidence	S. Smith, earrings	676

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF EXHIBITS

<u>NO.</u>	<u>STATE/DEFENSE</u>	<u>ID/EVIDENCE</u>	<u>TO/DESCRIPTION</u>	<u>PAGE</u>
47	Defense	ID	V. Braswell, vibrator	771
47	Defense	Evidence	V. Braswell, vibrator	777
48	Defense	ID	V. Braswell, butterfly	772
48	Defense	Evidence	V. Braswell, butterfly	777
49	Defense	ID	V. Braswell, bullet	772
49	Defense	Evidence	V. Braswell, bullet	777
50	Defense	ID	V. Braswell, Nubby G	773
50	Defense	Evidence	V. Braswell, Nubby G	777
51	Defense	Evidence	V. Braswell, whips	777
52	Defense	Evidence	V. Braswell, bullet	777
53	State	Evidence	V. Braswell, photo	805
54	State	Evidence	V. Braswell, photo	805

1 THE COURT: Mr. Bailey, you may call your first  
2 witness.

3 MR. J. BAILEY: Yes, Your Honor. Call Mr. Glen  
4 Wright. For the record, Your Honor, the defendant waives any  
5 privilege.

6 THE COURT: All right.

7  
8 GLEN WRIGHT

9 called as a witness, being first duly sworn, was examined and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. J. BAILEY:

13 Q State your name for the record, please.

14 A Glen Wright.

15 Q And, Mr. Wright, what is your occupation?

16 A I'm a lawyer.

17 Q And how long have you practiced law?

18 A Since 1982.

19 Q And where do you currently practice law?

20 A Here in Memphis, Shelby County.

21 Q And are you with a firm?

22 A Wilson and Wright.

23 Q And how long have you been with Wilson and Wright?

24 A Since about '93.

25 Q Okay. And prior to going into private practice, where

1 did you work?

2 A The District Attorney's Office here in Shelby County.

3 Q In fact, did you work in the same office with these two  
4 ladies?

5 A That's correct.

6 Q And how long were you in that office?

7 A About eight years.

8 Q And altogether how long have you been practicing law?

9 A Since '82 so I think that's about 23 years.

10 Q And I think at one point did you serve with the Board  
11 of Professional Responsibility?

12 A I still do.

13 Q You still do?

14 A Yes.

15 Q And what is the Board of Professional Responsibility?

16 A It's an organization that governs the conduct of  
17 lawyers in the State of Tennessee.

18 Q And how were you chosen to serve on that board?

19 A Selected by the Chief Justice of the Supreme Court.

20 Q Do you know the defendant in this case Mr. Vern  
21 Braswell?

22 A I do.

23 Q And at what point -- at one point in time did you  
24 represent Mr. Braswell?

25 A I did.

1 Q I want to take you back to the date in question.  
2 You're familiar with this case; is that correct?

3 A I am.

4 Q Did you represent Mr. Braswell at all in terms of legal  
5 representation in this case?

6 A I did.

7 Q And at one point in time did you have an opportunity to  
8 visit Mr. Braswell immediately after or soon thereafter he was  
9 arrested?

10 A I did.

11 Q And where did you visit Mr. Braswell?

12 A The first visit was in the Homicide Office in this  
13 building, I think on the 11th floor.

14 Q All right. And did you have an occasion to -- and for  
15 the record, you weren't in here when we did this, but Mr.  
16 Braswell I'll state as his counsel he waives any privilege.

17 A Okay.

18 Q Did you have an occasion to ask him what happened or  
19 something of that nature?

20 MS. WEIRICH: May we approach, Judge?

21 THE COURT: You may.

22 (Bench conference commenced.)

23 MS. WEIRICH: I object to hearsay.

24 MR. J. BAILEY: It's the defendant and they raised  
25 this issue about him never telling anybody other than -- I

1 mean, never telling anybody until now about his statement of  
2 how these things occurred. They raised that issue several  
3 times. And this is -- and my proof is going to be that he did  
4 tell counsel and counsel told him not to say anything else to  
5 the police. And that's crucial to his defense, Judge.

6 MS. CARNESALE: It's still hearsay.

7 MR. J. BAILEY: It's the defendant. It's a  
8 statement of the defendant.

9 THE COURT: Just because it's a statement of the  
10 defendant it can still be self-serving. It can still be  
11 hearsay. I mean, the reason that the statements of the  
12 defendant come in normally is that they're incriminating.  
13 Generally, things a defendant says in a criminal case that are  
14 sought to be introduced are incriminating statements,  
15 therefore, they are an exception to the hearsay rule. But a  
16 defendant can't go out and make self-serving statements and  
17 then come in and have other people testify to them in court.  
18 Otherwise, anybody charged with a crime could go out and find  
19 ten priests and tell them all these self-serving things and  
20 then just call the priests in to testify on their behalf and  
21 never have to take the stand themselves.

22 MR. J. BAILEY: But I would state to the Court for  
23 this record that the State has raised this issue in front of  
24 this jury that this defendant -- that the first time that he's  
25 ever said anything about this was now, about the death



1 occurring as a result of rough sex. And he did say something  
2 about it and that statement is going to be -- I mean, Mr.  
3 Wright's statement would be that they advised him not to give  
4 anymore statements to the police, Judge, and that -- but this  
5 jury -- all this jury has heard over and over and over again  
6 is that the only -- what he told -- three police officers have  
7 taken the stand to this occurrence and I think that the jury  
8 needs to hear why he didn't tell them.

9 MS. WEIRICH: The defendant can testify to all  
10 that, Judge, not Mr. Wright. It's a self-serving statement by  
11 someone that's his party. It's not a party by (indiscernible)

12 MR. W. BAILEY: Judge, there's one other thing.  
13 He did mention to Mr. Wright that he -- that his defense at  
14 that point was he revealed to Mr. Wright that he was having  
15 rough sex with his wife. And of course that goes contrary --  
16 that rebuts a stance in his defense that he did speak earlier  
17 about it, until told by counsel not to say anything else, not  
18 to talk to the police.

19 MS. WEIRICH: It doesn't fit --

20 MR. W. BAILEY: So it's not so much going to the  
21 truth of what he said as much as it is that he did say.

22 MS. WEIRICH: It's completely offered for the  
23 truth of the matter.

24 MR. W. BAILEY: His action.

25 MS. WEIRICH: It's not his action. It's his

1 statement that they're trying to introduce for the truth of  
2 the matter. They're not trying to introduce conduct.

3 MR. J. BAILEY: Well, I am also trying to rebut  
4 the statement that the officer put into evidence.

5 MS. WEIRICH: And he can do that through his  
6 client.

7 THE COURT: Okay. For now I'm going to sustain  
8 the objection. We may revisit this after your client  
9 testifies. So have Mr. Wright remain on call and remain  
10 nearby.

11 MR. J. BAILEY: Very well.

12 THE COURT: If this would complete your  
13 examination of him, ask him to remain nearby. At this point  
14 having heard no more, I'm going to sustain the objection.

15 MR. J. BAILEY: I do have a couple other things  
16 I'm going to ask about his demeanor and so forth. I can ask  
17 that, can't I?

18 THE COURT: You can ask that.

19 (Said bench conference concluded.)

20 Q Mr. Wright, without getting into what the defendant  
21 said, how was his demeanor?

22 A He was upset.

23 Q Was he crying?

24 A I don't recall any crying but he was upset.

25 MR. J. BAILEY: May we approach one more time,

1 Your Honor?

2 (Bench conference commenced.)

3 MR. J. BAILEY: I thought about -- precaution, ask  
4 you as a precaution. Am I allowed to ask him did he advise  
5 the defendant to give no more statements to the police? Now  
6 that's not hearsay.

7 MS. CARNESALE: That's still hearsay out-of-court  
8 statement offered for the truth --

9 MR. J. BAILEY: I'm asking did he in fact --

10 MS. CARNESALE: It's his statement.

11 THE COURT: Mr. Wright's statement, is it not? I  
12 mean, why would that not be hearsay also?

13 MR. J. BAILEY: He's not testifying as to what  
14 somebody else is saying. He's testifying as to what he said.

15 MS. WEIRICH: That's hearsay.

16 THE COURT: So what? It's an out-of-court  
17 statement offered for the truth of the matter therein. You're  
18 asking that he be allowed to say --

19 MR. J. BAILEY: Did I advise the defendant not to  
20 give anymore statements to the police. That's it.

21 MS. WEIRICH: It's an out-of-court statement  
22 offered for the truth of the matter. It doesn't fit the  
23 exception to the hearsay rule.

24 MR. J. BAILEY: I don't think it's offered for the  
25 truth of the matter. I think it's offered just simply --

1 MR. W. BAILEY: They can cross-examine him if they  
2 want to on that.

3 THE COURT: But how do you get past the hearsay  
4 objection, cross-examination or not?

5 MR. J. BAILEY: I don't think it's offered for the  
6 truth -- I'm not offering it for the truth of the matter  
7 asserted. I'm simply offering it to rebut what they have  
8 already put before the jury, Judge.

9 MS. WEIRICH: Which is offering it for the truth  
10 of the matter.

11 THE COURT: No, I'm going to sustain the  
12 objection.

13 MR. J. BAILEY: Very well.

14 (Said bench conference concluded.)

15 MR. J. BAILEY: Your Honor, I'm going to at this  
16 time pass the witness. I have Mr. Wright under a subpoena and  
17 I'd ask that infurtherance of Your Honor's ruling that that  
18 subpoena be a continuing subpoena until later in the trial.

19 THE COURT: It will be. Ms. Weirich.

20

21 CROSS-EXAMINATION

22 BY MS. WEIRICH:

23 Q Good afternoon, Mr. Wright.

24 A Good afternoon.

25 Q When you were in the Homicide Office with your then

1 client, the defendant, this was or was it a Saturday; correct?

2 A I can't recall.

3 Q All right. Had he already been placed under arrest?

4 A He was under arrest, yes.

5 Q All right. So this was November 6th, 2004, or do you  
6 recall?

7 A I trust you for the date, but I don't recall what date  
8 it was.

9 MS. WEIRICH: Thank you. I have nothing further.

10 THE COURT: You may step down. Call your next  
11 witness.

12 MR. J. BAILEY: Call the defendant Vern Braswell.

13

14 VERN BRASWELL

15 called as a witness, being first duly sworn, was examined and  
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. J. BAILEY:

19 Q You are Vern Braswell?

20 A That's correct.

21 Q And you're the defendant in this matter; is that right?

22 A That's correct.

23 Q And you know why you're here; is that correct?

24 A Yes.

25 Q Now let me take you back. You sat through the trial.

1 You've been here every minute of the trial; is that correct?

2 A That's correct.

3 Q You were married to the decedent Sheila Braswell; is  
4 that correct?

5 A Yes, that was my wife.

6 Q And of that marriage, how many children?

7 A We had two boys, William and Miles.

8 Q And where did you meet Sheila Braswell?

9 A Sheila and I met at the -- at that time was the Days  
10 Inn on Union across from the Peabody. We was at a college  
11 party. We met on the elevator on the way up. There's some  
12 disputes or discrepancies as to who was hitting on who. My  
13 version is that she was hitting on me. Her version was that I  
14 was hitting on her. But we met at a college party, swapped  
15 phone numbers and actually talked that night until the sun  
16 came up the first night we met.

17 Q And at some point did you all begin dating?

18 A Uh-huh.

19 Q And how long did you date?

20 A For approximately three years, approximately two or  
21 three years.

22 Q And now during this courtship -- what kind of courtship  
23 was it? How would you characterize it?

24 A Sheila was like one of the guys when she was female.  
25 She liked sports. You could watch football with her,

1 basketball. She could out-drink me and that was the first in  
2 a girl I ever dated. And, you know, whereas in college I take  
3 road trips with my buddies with the guys, I started taking,  
4 you know, road trips with Sheila.

5 Q At some point did you all get married?

6 A Yes.

7 Q Obviously. And what year was it that you were married?

8 A In 1994.

9 Q And now you've heard the testimony regarding this  
10 incident in Millington.

11 A Uh-huh.

12 Q Is that testimony -- or tell us about what happened in  
13 Millington.

14 A You know, I -- I sat here and I've listened to this  
15 incident about me supposedly dragging her down the, you know,  
16 stairs pregnant.

17 Q Did that happen?

18 A No. No.

19 Q Now you don't deny -- you saw the Millington Police  
20 Officer?

21 A That's correct.

22 Q His name is on my pad but you saw him come take the  
23 stand; is that correct?

24 A Correct.

25 Q And what he testified to, you don't deny that, do you?

1       A     No. You know what, I made -- I made -- I made some  
2 mistakes. I made a lot of mistakes. And if I had to do it  
3 all over again, intentionally hitting Sheila April 19th, 1996,  
4 that's one I would have never done.

5       Q     You don't deny that incident?

6       A     No, no, I was wrong.

7       Q     Let's start with did you hear Vera Cole take the stand?

8       A     Yes.

9       Q     Was she telling the truth?

10      A     No.

11               MS. WEIRICH: Objection, Your Honor. That's not  
12 for him to determine.

13               THE COURT: Sustained.

14      Q     Do you agree with her testimony?

15      A     Absolutely not.

16      Q     Do you ever remember a time where Sheila went and lived  
17 at her home?

18      A     No, sir. As I stated, when Sheila was pregnant, there  
19 wasn't a night that she stayed away from the house. Yes, I  
20 made some mistakes, but if there was one time I was really a  
21 good dude, it was when she was pregnant.

22      Q     Now let me ask you this question. Now there was one --  
23 was there a time when she did go stay somewhere else?

24      A     Uh-huh.

25      Q     And where was that?



1       A     She did go stay with Magra while I was in treatment,  
2     while I was in rehab.

3       Q     So you don't deny she went and stayed with Magra?

4       A     That's correct.

5       Q     On the night of November 4th in the morning of November  
6     5th, that time span is the subject of this case. Did you call  
7     the phone of Vera Cole?

8       A     No.

9       Q     You don't deny -- do you deny that you called a bunch  
10    of people?

11    A     Yes, but she wasn't one of them.

12    Q     Do you deny calling Lieutenant Mitchell?

13    A     No, I called him a lot of times.

14    Q     Why did you call Lieutenant Mitchell?

15    A     Because I was trying to get some help for my wife. I  
16    was trying to get some help. When the EMTs came, they didn't  
17    try to resuscitate her. When I dialed 911, all I could think  
18    was to get somebody there to help my wife. I was trying to  
19    get Sheila some help.

20    Q     And Lieutenant Mitchell wasn't the only cop you called,  
21    was he?

22    A     No.

23    Q     You called -- what other police officer did you call?

24    A     I called Myron, Myron Fair. I called Captain Fifer.  
25    It's a policeman I know from Hanley.

1 Q Now when you say Hanley, tell the jury what Hanley is.

2 A Hanley Elementary School is over in Orange Mound. And  
3 before I got arrested I worked as assistant principal.

4 Captain Fifer worked at the Orange Mound CO-ACT which is kind  
5 of like a police substation next door. And I would -- I'd  
6 take kids to work with him and stuff like that. So I had his  
7 number in his phone if you ever need me, just hit me up and  
8 give me a call. So his number was already in my phone.

9 Q So you don't deny calling him either, do you?

10 A No.

11 Q All right. Let's go back. You went to -- where did  
12 you go to school, college?

13 A Memphis State.

14 Q And did you graduate?

15 A I did.

16 Q And where did you go -- did you obtain any  
17 post-graduate education?

18 A Yeah. As soon as I graduated, I got -- I went right  
19 back. It was then The University of Memphis. I got a  
20 master's. I got a master's degree in administration and  
21 supervision.

22 Q And you mentioned Hanley. At some point did you begin  
23 to work there?

24 A Uh-huh, yes.

25 Q And you didn't -- when you started working there, what

1 was your position?

2 A I started working there as a teacher's aide. I was in  
3 college. And I worked my way to becoming a teacher and then  
4 instructional facilitator. And then in the summer of 2004, I  
5 became the assistant principal there.

6 Q In the summer of what year?

7 A In 2004.

8 Q Now let's get this out of the way. You know Kristie  
9 Woods, don't you?

10 A Uh-huh.

11 Q Tell these ladies and gentlemen of this jury how you  
12 know Kristie Woods.

13 A She's a young lady I had an affair with. We dated for  
14 a couple of years and that was it.

15 Q How did you come to meet Kristie Woods?

16 A I was over by Baptist College and I saw a guy that I  
17 kind of grew up with and he flagged me down, saying this girl  
18 wanted to meet me and we swapped numbers. During that time my  
19 wife and I -- I was doing instructional facilitator. I was  
20 also -- had a store online on E-bay and was doing a lot of  
21 business stuff. Sheila was also involved in a lot of business  
22 stuff. And we just kind of grew apart a little bit.

23 I was focusing on the boys and being a daddy and  
24 focusing on work and career stuff, and she was focusing on  
25 work and career stuff and we just kind of grew apart a little

1 bit. And I began to have an affair.

2 I dated Kristie about two years. Initially, it was  
3 just all about sex. That's all it was initially. It kind of  
4 got out of hand. I grew to like her. She grew to like me.  
5 And that was that. I came clean with her, told her I was  
6 married. That didn't matter to her. We kept dating, kept  
7 seeing each other.

8 Q Now how did Sheila actually come to find out about  
9 Kristie Woods?

10 A In the spring of 2004, Kristie began to get a little  
11 obsessive. If Kristie couldn't find me or didn't know where I  
12 was, she would call Sheila, kind of prank calls, call with a  
13 blocked number and would hang up on her. She would send her  
14 text messages, things of that nature. And Sheila was, like,  
15 something's going on or what's going on.

16 She began also to send her, like, harassing e-mails.  
17 Because I had a store on E-bay and had done some computer  
18 work, I learned how to trace what's called an IP address. And  
19 Sheila showed me one of the e-mails and I traced the IP  
20 address and it came from St. Jude. So she was, like, what's  
21 going on. Who is at St. Jude? It was Kristie. And then  
22 right at the same time of that, Sheila came to the motorsports  
23 track where I was with Kristie.

24 Q Is that what Ms. Woods -- you heard Ms. Woods testify.  
25 Is that true what she said?

1 A Yes, that was true.

2 Q Now, do you deny the altercations that Ms. Woods  
3 testified to?

4 A I don't -- I don't deny the altercations. I deny the  
5 reason behind them though.

6 Q Let's start with that first altercation she spoke of in  
7 June 2004.

8 A Uh-huh.

9 Q What happened?

10 A After -- during the spring when she was doing harassing  
11 e-mails and phone calls, I told her, I said, look, leave my  
12 wife and my family alone. Leave them alone. This is going to  
13 be about us if we're to have anything. Leave them alone. And  
14 I found out that she was continuing to do that. So I kind of  
15 broke it -- broke away from her a bit, was kind of waning away  
16 from her. We was at the party. I found out -- Sheila called  
17 me and said I'm still getting these e-mails, still getting  
18 these text messages.

19 Q Who said that?

20 A Sheila called me while I was at the party and told me  
21 that. And in addition to that, a friend or somebody was at  
22 the house and she was, like, why don't you come on home so I  
23 can take this person home and talk about it. Because I had  
24 told Kristie earlier and I was -- I was pretty nice to her.  
25 Even though I was wrong for dating her, I was pretty nice to

1 her and I felt that, look, if I set this up as a boundary, the  
2 least that you can do is respect this. And I got angry  
3 because she didn't. And at the party, I grabbed her and said  
4 look, you fucked up. Leave me the fuck alone. And I pushed  
5 her away and I proceeded to leave.

6 Q Is that what happened?

7 A That is what happened.

8 Q And then there was this second incident she testified  
9 that she alleges occurred at her home?

10 A Correct.

11 Q What happened at that incident?

12 A Around -- that was Labor Day weekend of 2004, which is  
13 incidentally me and Sheila's anniversary, too. I was supposed  
14 to be having an event down at the club. I closed down early  
15 to go home to be home with Sheila. She canceled her plans to  
16 come to the club to be with me. So we kind of missed each  
17 other. When we caught up with each other, she was like where  
18 you at. I'm like, I'm at home where are you. She was, like,  
19 where you at? Like, I'm at home. Where are you? She, like,  
20 I'm at the club.

21 So me and Sheila hooked up and wound up going out that  
22 weekend and celebrating our 10th anniversary. Kristie gets  
23 upset about it and comes and slashes Sheila's tires. And like  
24 I said, I repeatedly told her, look, Sheila, my family are off  
25 limits. Leave them alone. Because -- let me back up a little

1 bit. Where Sheila and I went that Friday night was we went to  
2 Platinum Plus, a club over on Mt. Moriah.

3 Q And Platinum Plus is what kind of facility?

4 A It's a strip club.

5 Q Let me ask you this question. Did you and Sheila often  
6 go to strip clubs?

7 A Yes, frequently.

8 Q Did you and Kristie go to some strip clubs?

9 A Yes, frequently.

10 Q What about with the Rough Riders? Did you all go to  
11 strip clubs?

12 A Yeah, we did.

13 Q Often? Not often? How often?

14 A We would every -- about once or twice a month we do a  
15 night out and we kind of rotated. One night it would be a  
16 movie. One night we may go to a strip club. So, yes, we did  
17 but it wasn't our regular thing.

18 Q Okay. Go ahead.

19 A But let me say this though. That night Sheila and I  
20 went to Platinum Plus and we had another young lady with us  
21 who's lesbian and I had some doubts in my mind as to did this  
22 girl's girlfriend slash these tires or did Kristie do it. So  
23 I called Kristie and she basically tells me she did it. What  
24 made me angry was two of the tires were slashed. One of them  
25 was punctured. So we take those tires to Wal-Mart, get new

1       tires and she starts driving on that car and has a blowout and  
2       that kind of -- kind of ticked me off a little bit.

3       Q       You said she started driving?

4       A       Sheila did, Sheila.

5       Q       And so you go to Kristie's and what happened?

6       A       I go to Kristie's and she told me she did it. And I  
7       grabbed her, said, look, leave my damn wife alone. Leave her  
8       alone.

9       Q       Did you hold her head against the --

10      A       No.

11      Q       -- the glass table?

12      A       No, I didn't bang her head against the table. I didn't  
13      bang her head against any wall, do any of that stuff.

14      Q       But you don't deny the altercation?

15      A       That's correct.

16      Q       Okay. The incident in Millington, why did that occur?

17      A       In '95 when Sheila was living with Magra, she had had  
18      an affair. I was in treatment also during that summer. Right  
19      after that Sheila went to Richmond, Virginia, to complete some  
20      clinicals. She was in the OT program at UT Memphis and they  
21      had to do clinicals to wrap up their course work. So Sheila  
22      was in Richmond. I'm back at home in Millington.

23             Sheila comes back, moves in. I'm doing some cleaning  
24      and I find some letters and some notes from the guy that she  
25      was having an affair with. And we get into an argument about



1 it. I ask her, you know, what's this? Why were you doing  
2 this? Her response to me was, if your ass would have been  
3 here with me instead of out in them streets drinking and  
4 drugging, then I wouldn't have had to go to another man. I  
5 snapped. I popped her, hit her, put her in a headlock and I  
6 left.

7 Q Did you ever have another physical altercation with  
8 Sheila Braswell, an angry one, a -- any kind of abusive  
9 situation after that?

10 A Nothing. Nothing. Absolutely nothing.

11 Q Were the police ever called to your home that you know  
12 of after that?

13 A No.

14 Q All right. You have heard a lot in this courtroom, I  
15 would assume since you've been in here, about rough sex; is  
16 that correct?

17 A (Witness nodded head up and down.)

18 Q Could you explain how you got into that?

19 A Through watching porn.

20 Q Can you speak up a little louder, please?

21 A I got in it through watching porn, and it just kind of  
22 evolved into what we liked to do. For us, me and Sheila, it  
23 was adventuresome. She had a lot of outfits, a lot of  
24 knee-highs, heels.

25 Q Who bought those things?

1       A     She did, I did. It depended on the occasion. If it  
2       was me wanting to surprise her, I'd buy it, lay it out, she'd  
3       wear it. If it was her wanting to surprise me, she'd buy it,  
4       put it on and surprise me.

5       Q     Are you familiar with a place called The Treehouse?

6       A     (Witness nodded head up and down.)

7       Q     What is The Treehouse?

8       A     The Treehouse is a swingers club. It's kind of a sex  
9       club, a swingers club.

10      Q     When you say "swingers club," explain to these ladies  
11     and gentlemen here what that is.

12      A     Swingers are when people that swap partners or may not  
13     even be any partner swapping. Some people have certain  
14     fetishes like voyeurism. They like to watch other people.  
15     Some people like to watch their spouse or their mate having  
16     sex with somebody else. Some people like three-somes and  
17     four-somes. And Treehouse is a place where things of that  
18     nature can be practiced in a controlled environment.

19      Q     Is that here in Shelby County?

20      A     Uh-huh.

21      Q     Have you been there?

22      A     Uh-huh.

23      Q     How many times have you been there?

24      A     Three or four.

25      Q     Has Sheila Braswell been there with you?

1 A Uh-huh.

2 Q How many times?

3 A One -- she went one less time than I did. I've been  
4 there four times. She went three.

5 Q Is there a reason why Sheila got into these things with  
6 you?

7 A Uh-huh.

8 Q Explain.

9 A Because she loved me. Because she loved me. The rough  
10 sex, the kinkiness, the outfits, I mean, she was trying to  
11 please me. The only thing that I didn't bring to the table  
12 was the autoasphyxia. That's something she developed on her  
13 own.

14 Q Now when you say "she developed on her own," explain  
15 what it is and tell me how she developed it on her own.

16 A Autoasphyxia, autoeroticism, that term explains  
17 somebody choking themselves. And the trick is to time it with  
18 the orgasm so that you're getting the intensity of the orgasm,  
19 along with the intensity of a choking sensation. And auto is  
20 when you do it to yourself or do it by yourself.

21 Q All right.

22 A How it's done?

23 Q No. Let me ask my second question. Did you or Sheila  
24 Braswell ever engage in that activity?

25 A Uh-huh, we did.

1 Q Did you or Sheila Braswell ever engage in it as a  
2 couple?

3 A Uh-huh.

4 Q Explain that to the jury. How did you do it?

5 A When she did it -- and I was real uncomfortable with  
6 her doing it -- if you can imagine a bathrobe or anything  
7 long, but a bathrobe is what she did most. Take it and just  
8 drape it around you and then take those ends and then wrap  
9 them up so that when the pressure is released, it just  
10 automatically falls apart or the detention is released. But  
11 when you got it up, you take it and just say wrap it around  
12 something else so that you can pull and just get tension.  
13 Just enough to get the blood cut off and get the circulation  
14 going -- I mean, get that affect going. As you're doing that  
15 or -- you have it set up. When you're getting ready to --  
16 when you feel the orgasm coming on, you tighten it so that  
17 that feeling coincides with the orgasm. When you go limp or  
18 when it's cut off, automatically you're going to let it go and  
19 it's going to loosen or release. That's how autoerotica slash  
20 asphyxia is done.

21 Q And did Sheila Braswell ever engage in that activity?

22 A Yes.

23 Q And how did you all do it as a couple?

24 A We were having sex together, she didn't care for me  
25 being in front of her asphyxiating her. What she preferred,

1 it was for me to be behind her, using -- just like Kristie  
2 said this morning, behind her the doggy-style position with my  
3 arm around her. It was just the same way Kristie did with the  
4 officer behind her, my arm around, sometimes with my hand  
5 pinching the arteries and the veins, the carotid and jugular  
6 on the side.

7 Q How often did you all practice that?

8 A Roughly once a week.

9 Q Was there a fail-safe or some kind of signal that was  
10 supposed to be given to let you know when to stop?

11 A Uh-huh.

12 Q And what was the signal?

13 A What she would do, we would always be next to something  
14 that she could put her fingers on, like the side of the  
15 jacuzzi or like the headboard or something. And the purpose  
16 for doing that was if your fingertips are on something, when  
17 you go limp they're going to fall and I would see her fingers  
18 fall, that would let me know to release. Or if I was too  
19 tight, she'd tap. She'd just tap and that would let me know  
20 to release some.

21 Q And how often did you say that occurred?

22 A Roughly once a week. We may do it two -- between one  
23 and three times whenever we did.

24 Q Were there -- excuse me, for lack of a better word "sex  
25 toys" utilized in your home?

1 A Uh-huh.

2 Q Were there a lot of them or were there few?

3 A It depends on what you're comparing it to.

4 Q Was there more than one? More than ten?

5 A Yeah, perhaps, yeah. When you take into account the  
6 bullets and floggers or whips and vibrators, yeah. It was a  
7 lot.

8 Q Now when you left your home the last time you saw your  
9 home before being arrested, were those items in your home?

10 A Yes, they were.

11 Q Can you identify those items if you were to see them  
12 today?

13 A Uh-huh.

14 Q We'll come back. Now I want to take you to the day of  
15 November 4th of 2004. Let's start with your getting up that  
16 morning. What did you -- tell me what you did that day. And  
17 I want you to take me up to your going home that night.

18 A Typically, she yelled at me get your butt up, it's time  
19 to go to work; shake me, shake me, shake me. I was a hard  
20 sleeper. I get up. The boys' stuff would be laid out. I  
21 would get them dressed. One of us would go through the  
22 oatmeal, toast whatever they was having for breakfast. They  
23 would eat breakfast on the way to school. They went to school  
24 where I worked at so we was together during the day.

25 My daily duties at work. My daily duties, you know, at

1 work. They had switched to a new football team and this  
2 football team, little league football team had made it into  
3 the playoffs. So with this being -- with that being football  
4 season, after work I wrapped up my stuff, we'd go to the  
5 house. They'd have a snack. We'd knock out homework and take  
6 them on to football practice, which was, like, 5:30 to 7,  
7 7:30.

8 Q Okay. What happened then?

9 A On that particular night after practice I bring the  
10 boys home. We would have already knocked out homework,  
11 already had a snack. Mom would have been home getting them  
12 something ready for dinner. I had a rental that next night at  
13 the club --

14 Q Explain what you mean by "you had a rental that night."

15 A Whenever somebody needed somewhere to have their party  
16 or event or whatever they was having, I would lease -- I would  
17 lease the space out to them.

18 Q Now let me stop you right there, sir. Were you trying  
19 to finish your question, your answer?

20 A Go ahead.

21 Q You heard the talk of you and Papa Bear on this tape.  
22 What's Papa Bear's real name?

23 A Darnell Gardner.

24 Q From your phone calls from the jail not long after you  
25 were arrested; is that correct?

1 A Uh-huh.

2 Q And when you were talking about the club and closing it  
3 down and letting them -- on the tape. You heard the tape.  
4 Was that the rental you all were talking about?

5 A Uh-huh.

6 Q All right. Go ahead.

7 A A friend was going to have a bachelor's party or some  
8 type of party the next night, and I had some air conditioning  
9 and some heating issues so I met somebody there. It was  
10 getting in November. It was going to be cold that night so I  
11 met somebody there to work on the heating and air and to make  
12 sure things were going to be okay because on Friday from the  
13 time I leave work, boys' football practice, I wouldn't have  
14 had time to do anything in preparation for this guy's rental  
15 and I had some code enforcement people coming by, too.

16 Q What happened after that? Did you see Kristie Woods  
17 that night?

18 A I believe I did. I believe I --

19 Q Was there anything eventful about that?

20 A No.

21 Q Was she -- you heard her testimony that she was the  
22 bookkeeper. Was that true?

23 A Yes, it was true. In actuality, I was kind of  
24 gravitating those responsibilities away from her somewhat.  
25 But she still -- she had all of the financial records and all



1 that stuff so yes, she was the bookkeeper but we was in the  
2 process of moving all that stuff away from her.

3 Q So after the boys' football practice, what happened?

4 A Dropped the boys off at home, let Sheila know what was  
5 done in terms of homework. That's Thursday. Friday William  
6 had a spelling test, go over his spelling words with him. I  
7 told her I had to go meet Patrick at the club. He was  
8 checking out the heating and the air.

9 Q Now Sheila was getting ready for some event; is that  
10 right?

11 A Uh-huh.

12 Q What was the event?

13 A What she did was called Beauty Control. And what they  
14 would do is, like, pampering parties. They come to somebody's  
15 house and pamper you and it's like a women's session and they  
16 do manicures and just pamper them and things of that nature.  
17 And they sold beauty products at those things and she was  
18 doing one at her brother and sister-in-law's that next night.  
19 She was scheduled to do one.

20 Q All right. And go ahead. What happened after you  
21 brought the boys home and you think -- you ended by saying you  
22 went back to meet the guy about the heating and air?

23 A Right. I go back to the club and I started to put some  
24 things up and get some things out the way. May have worked on  
25 some records while the heating and air man was doing his

1 thing. And that was about it at the facility.

2 Q What time did you go home?

3 A It was late, like 10:45, 11. It was late.

4 Q I want to pass to you what was previously marked as  
5 Exhibit 30. Let me refer you to a specific page, please. I'm  
6 going to refer you to at the top of the page it says "page 7  
7 out of 10." In fact, I've already turned the page. You've  
8 seen this before, haven't you?

9 A Uh-huh.

10 Q You've gone over it with me before; is that right?

11 A Uh-huh.

12 Q Now that's the -- I think it's already in evidence that  
13 that's the phone log from Nextel; is that correct?

14 A Uh-huh.

15 Q Do you deny that that's your telephone?

16 A I don't deny that.

17 Q Do you deny making the calls there or receiving the  
18 calls as they indicate on the record?

19 A I don't deny that.

20 Q Tell me the last call, if you can find it on that  
21 sheet, the last call that was made or received by your phone  
22 on November 4th.

23 A 22:57, which would be 10:57.

24 Q And who was that call made from?

25 A It came from Kristie's house.

1 Q And she testified to that, did she?

2 A That's correct.

3 Q Do you deny that?

4 A No.

5 Q Now do you see another call on there -- when is the  
6 next call? Maybe that's what I should ask you.

7 A The next call is out-bound call at 3:55.

8 Q All right. And who was that call made to?

9 A Lieutenant Mitchell.

10 Q Okay. Tell the ladies and gentlemen of this jury why  
11 you called Lieutenant Mitchell at 3:55.

12 A Trying to get some help for my wife.

13 Q Did you make a call from that phone at least at 1:30?

14 A No.

15 Q All right. You got home, I think you just testified  
16 around 10:30; is that right?

17 A Uh-huh.

18 Q What happened after you got home that night?

19 A One of my duties and responsibilities is doing teacher  
20 attendance. So normally about that time around 11-ish, I  
21 would have checked the substitute teacher system or the  
22 teacher absence system to find out which teachers are going to  
23 be absent so that I can make sure I have adequate subs to do  
24 the -- to cover my classrooms and things of that nature.

25 Q Then what happened?

1       A     I would have made sure my stuff was laid out. I would  
2     have made sure the boys' stuff was laid out.

3       Q     Okay. Now you say "the boys" and the boys are --  
4     you're referring to your sons?

5       A     Uh-huh.

6       Q     And where is their room in relation -- when I say room,  
7     bedroom, in relation to the master bedroom that you and your  
8     wife slept in?

9       A     It's across from our bedroom.

10      Q     Is it directly across?

11      A     Indirectly. Our -- our bedroom has a little piece of a  
12     hallway because that's where the utility closet is, the washer  
13     and dryer is right there. Right after that little utility, it  
14     T's and the guest bedroom and boys' bedroom are right there.

15      Q     And if someone were to scream from your bedroom, could  
16     they be heard in the children's room?

17      A     Absolutely. When they scream we hear them.

18      Q     I'm going to get to -- let's just take it step by step.  
19     All right. So after you finish your teacher work, what did  
20     you do then?

21      A     Like I said, I would have made sure my stuff was laid  
22     out for the morning. I would have made sure the boys' stuff  
23     was laid out for in the morning. I'm not absolutely 100  
24     percent sure but that would have about been my normal routine.

25      Q     Was Sheila -- what was Sheila doing?

1       A     Getting -- I know she was going back and forth upstairs  
2     and downstairs getting products ready for the next day.

3       Q     And what's upstairs?

4       A     Office and guest bedroom, bathroom, attic.

5       Q     Now did you all ever engage in sexual activity that  
6     night on the night of November 4th?

7       A     Uh-huh.

8       Q     In the morning of November 5th, did you engage in  
9     sexual activity?

10      A     Yes.

11      Q     Okay. Explain what happened.

12      A     Somewhere around midnight we get into the jacuzzi and  
13     we just relax at the end of our day. And during this time we  
14     are real girlfriend and boyfriend-ish, real, real giddy. We  
15     had worked through some stuff. We had worked through this  
16     Kristie stuff. It was like we was dating again. It was like  
17     she was my brand new fresh girlfriend and I was her brand new  
18     fresh boyfriend again. One of the things we did was hopped in  
19     the jacuzzi at the end of the night and kind of went over our  
20     day, just talked about our day.

21             We start, you know, caressing each other and we start  
22     getting intimate. We start having sex.

23      Q     Now without -- I don't want to have to get into a whole  
24     lot of graphic detail but I want you to explain -- you say "we  
25     started having sex," was it rough sex? Was it natural sex?

1 Explain to these ladies and gentlemen.

2 A When we were in the jacuzzi, we just did a lot of  
3 caressing and kissing. We started but sometimes a lot of  
4 water and sex don't mix so we got out and got onto the floor.  
5 We did it on the floor in the bathroom, worked our way, floor  
6 of our bedroom. She asked me to fix her. That was the way  
7 she -- that's the way she asked for an asphyxiation, will you  
8 fix me. She's on her knees. I'm on my knees behind her.

9 Q Did you choke her?

10 A Yeah.

11 Q Were you trying to kill her?

12 A No.

13 Q Were you trying to hurt her?

14 A No.

15 Q Were you trying to cut her air off?

16 A That's apart of it.

17 Q Were you trying to cut her air off until she died?

18 A No.

19 Q Where were your children at that time?

20 A Asleep.

21 Q Where in the house?

22 A In the bedroom across from our room.

23 Q Were they ever awakened?

24 A No.

25 Q Let me ask you this question. It's been a lot of

1 testimony, and I think you heard it, regarding the children  
2 being next door. How did the children get next door?

3 A At, like, a little bit right after four o'clock as soon  
4 as the EMTs and the fire truck pulled up, Jim my next-door  
5 neighbor called and said what's going on. He wanted to know  
6 what was happening. And I told him she won't breathe. She  
7 won't breathe. She won't breathe. And he said oh, shit, and  
8 ran over and came over.

9 Q Were the children awake or sleep when he got there?

10 A They were still asleep. And as a matter of fact, they  
11 were still pretty asleep when he carried them back home with  
12 him.

13 Q So you didn't take those children -- did you take the  
14 children next door?

15 A No.

16 Q Who took them next door?

17 A Jim did.

18 Q Were y'all friends or were you just acquaintances?

19 A We were friends. We had been neighbors for seven  
20 years. They come over to our house for family functions and  
21 stuff like that. And we go next door to theirs.

22 Q So you all were engaged in what y'all called fixing?

23 A (Witness nodded head up and down.)

24 Q Now I need you to explain how you would fix her.

25 A I'm behind her. We're having sex. We're at the foot

1 of the bed. I don't know if you have the pictures but our bed  
2 had big poles on it. And connecting those poles is a strip ,  
3 that goes across the foot of the bed and that's where we are,  
4 the reason being so that she can put her fingers along that  
5 strip. I put my arm around her. She pinches me, which let's  
6 me know to tighten up and she stops when I got my arm where  
7 she wants it. She starts having an orgasm. Her hands drop.  
8 I release. But when her hand is dropped, I can't keep holding  
9 her and I can't let her go so I have to just kind of cradle  
10 her and lay her down and relax her.

11 Q Now at this point where are you all?

12 A We're at the foot of the bed on the floor.

13 Q All right.

14 A When she's coming back around, at this time I'm still  
15 caressing her, fondling her, kissing her.

16 Q Do you shake her? Do you say wake up? How does he  
17 come back around?

18 A In the beginning I would --

19 Q When you say "in the beginning" you mean this day?

20 A No, when we first started -- when we first started  
21 doing asphyxia.

22 Q And how long had you been doing asphyxia?

23 A About two years or so.

24 Q Go ahead.

25 A In the beginning when she would go limp, I would just,



1     you know, sit there and watch her and she was, like, don't do  
2     that. Stop. Don't, don't, don't.

3         Q     Why?

4         A     And I asked her why. She equates and she says, don't  
5     you know how you feel in the morning --

6                 MS. WEIRICH: Objection, Your Honor, hearsay.

7                 MR. J. BAILEY: It's not offered for the truth of  
8     the matter asserted but I can rephrase it.

9                 THE COURT: Rephrase.

10         Q     Why -- did she want you to shake her and wake her up?

11         A     No.

12         Q     Was that part of the orgasm experience?

13         A     Yes. Here's what I learned. When you're coming out of  
14     it, to be shaken kind of ruins the moment of it. Don't shake  
15     them. Just let them come to. And if I had to equate it to  
16     something, it would kind of be like to waking up in the  
17     morning naturally or waking up having somebody to shake you --

18         Q     Now --

19         A     -- the difference.

20         Q     So what happened after she comes around?

21         A     While we're on the floor, like I said, after she goes  
22     limp I lay her down. I'm still -- we're still in the act.  
23     I'm kissing on her, still rubbing her so that when she comes  
24     out of it, she's still getting some additional sensations. I  
25     start to feel carpet burns on my knees so we hop in the bed

1 and we're having sex in the bed.

2 Q Okay. And then?

3 A We have sex for about, I don't know, 20, 30 minutes in  
4 the bed. She asked me would I fix her again and can I get  
5 another fix. That's the way she asked.

6 Q Now how do you all end up in the bathroom?

7 A After that second one, we just kind of layout, layout  
8 in the bed watching TV. She said she was cramping a little  
9 bit. She gets up, goes into the bathroom part and our -- our  
10 bathroom is in a suite by itself. It's not -- it's like a  
11 whole different room and stuff. I hear the -- I hear water  
12 running. I hear the jets come on. I go on off to sleep.  
13 However, about two -- I don't know what time it is, somewhere  
14 about 2:45, three o'clock, she wakes me up and she's  
15 performing oral sex on me and that's how she wakes me up.

16 Q You mean that day?

17 A Uh-huh. She turns around and now we're doing oral sex  
18 on each other. I'm rubbing her, caressing her and she asked  
19 me -- she asked me if I wanted to have some anal sex with her.  
20 I told her yeah, sure. She said come on. When we did sex  
21 that way, she liked to be in the jacuzzi. There's something  
22 therapeutic about the water. It kind of provided -- the jets  
23 kind of hit in different parts of her body, would provide kind  
24 of like a distraction. Just that type of sex in and of itself  
25 is kind of unpleasurable unless she was kind of in this mood

1 or had some distractions or something.

2 Q She related -- had she related to you before that she  
3 didn't really care for that kind of sex?

4 A Yeah. Yeah. She really didn't -- she really didn't  
5 care for anal but she did it to please me. And if she was  
6 stimulating herself or doing something else, it was a lot  
7 better if we were in the jacuzzi. It's a lot better.

8 Q All right. Now what happened? Get -- you all are back  
9 in the jacuzzi. What happened?

10 A We get in. We don't hop immediately into it, some  
11 kissing, some caressing. She turns the water on hot with the  
12 jets on. With our jacuzzi if you just fill it up with hot  
13 water, flip the jets on, what's going to be in it is a bunch  
14 of cold water coming out the jets. So what she would do is  
15 she'd fill the jacuzzi up with hot water while the jets are on  
16 so that we got hot water circulating through it. So while  
17 we're kissing and being intimate that's what she's doing. And  
18 she liked the water hot as all get-out. The heat that she  
19 liked in that thing was unbearable by me.

20 Q Was there a reason why Sheila liked the water that hot?

21 A I don't know. Now when she was in there by herself,  
22 she said it would alleviate her cramping. Frequently after  
23 sex she would have some abdominal pains or something and she  
24 said it would alleviate it. But she just liked that water  
25 hot, much hotter than me.

1 Q So you're in the jacuzzi and what happens?

2 A She asked me if I was ready and I said yeah. And in  
3 the back of the jacuzzi, it slopes up, goes into the wall and  
4 whereas when we were on the floor we was up against the foot  
5 of the bed. When we were in the bed, we was up against the  
6 headboard. When we were in the jacuzzi, we're at the back of  
7 the jacuzzi. I started to fix her, puts her hand on the side  
8 of the jacuzzi and gives me the pinch and I started tightening  
9 up. I have anal with her.

10 Q Did she go limp?

11 A Yes.

12 Q What did you do?

13 A When she go limp in the jacuzzi, we had a -- an  
14 inflatable suction pillow. And like I said when she go limp,  
15 I set her down and I just lay her down. The water start to --  
16 the water was hot and that's how she had it and that's how she  
17 kept it and I just go on and get on out and go to the bed and  
18 wait on her to come to me.

19 Q Did you have -- what happened then?

20 A She didn't come. She didn't come.

21 Q So what did you do? Mr. Braswell, you say she didn't  
22 come, what do you mean?

23 A Normally, she -- normally, she get out and come on and  
24 get in the bed. She never came to the bed.

25 Q What did you do?

1       A     I laid around for a minute. I noticed it was, like,  
2       3:45, 3:50. I may have dozed off or something. I don't  
3       remember specifically. I go back in there and she's submerged  
4       in the water. She's under the water.

5       Q     You say she was what now?

6       A     When I go back in there, she's submerged under the  
7       water. She's under the water.

8       Q     What did you do at that point?

9       A     I grab her. I pull.

10      Q     This is very important now. Where did you grab her?  
11      How did you grab her?

12      A     I don't remember. I'm grabbing at my wife. My wife is  
13      under the water. One time grabbing her around her head area.  
14      One time grab her around the neck, around her -- around her  
15      abdomen, around her waist. And I couldn't get her out.

16      Q     All right. Did you try to get her out?

17      A     Yeah.

18      Q     Now you listened to this 911 call; is that correct?  
19      That was you on the tape. You don't deny that, do you?

20      A     Correct.

21      Q     The operator says Calm down, sir. Pull her out. Put  
22      your hands under her, I think between her underarms or  
23      something of that nature. Pull her out. And you say I can't.  
24      Could you?

25      A     No.

1 Q Now you heard the testimony of the EMT and the  
2 paramedic and they said -- and I think it was Lieutenant  
3 Jackson, said she was halfway in the tub and halfway out of  
4 the tub. How did she get like that?

5 A I'm constantly trying to pull her out. I'm grabbing.  
6 I'm tugging. I'm pulling. On the side that she was on is  
7 where our suction is. And it seem like her hair might have  
8 been in the suction or something because every time I'm  
9 pulling, everything comes -- when I say everything, her breast  
10 area, neck area comes out and it pulls her neck back and,  
11 like, back down when I release her, it pulls her back down  
12 into the jacuzzi. So --

13 Q I'm sorry, go ahead.

14 A So at the same time I'm trying to pull her out. I'm  
15 trying to dial 911. I'm trying to call anybody that can get  
16 my wife some help while all at the same time trying to do  
17 this.

18 Q All right. Now you heard the testimony of Ms.  
19 Sturdevant and the other witness from Bellsouth, the gentleman  
20 from Bellsouth; is that correct?

21 A Uh-huh.

22 Q Were you working two phones trying to get some help?

23 A Right.

24 Q You don't deny making all those calls, do you?

25 A No, I was trying to get some help.

1 Q Let me pass to you what has been previously marked as  
2 Exhibit 2. Is that a picture of -- I think it's been  
3 identified as a picture of your jacuzzi, your tub. Is that  
4 what it is?

5 A Yeah.

6 Q Now you see some eyeglasses sitting on the side; is  
7 that correct?

8 A Uh-huh.

9 Q How did those eyeglasses get there?

10 A We got back in there, I took them off her face, put  
11 them over there.

12 Q Okay. Now there was some testimony today about some  
13 earrings that were -- let me pass this to you.

14 MR. J. BAILEY: For the record I'm passing what  
15 was previously marked as Exhibit 46.

16 Q I want you to look in that envelope, sir, and tell me  
17 if you can identify those earrings or identify what's in it.

18 A It's two earrings and a nipple ring.

19 Q Okay. The two earrings, who did they belong to?

20 A Sheila.

21 MR. BAILEY: Mr. Lafferty, may I see that, please?

22 Q Now I want you to take a look at the clasps of these  
23 earrings. The clasps, I mean the part that goes into the ear.  
24 That's what I mean by clasp. In what condition are they in?

25 A They're functional.

1 Q Would you characterize -- how would you characterize  
2 them?

3 A Working condition. They look undamaged.

4 Q Are they broken off?

5 A No, sir.

6 Q When was the last time you saw those earrings?

7 A They was sitting on the side of the jacuzzi.

8 Q How did they get on the side of the jacuzzi?

9 A We took them off.

10 Q Now the other ring that's there, that was allegedly  
11 found in the tub --

12 A Uh-huh.

13 Q -- who does that belong to?

14 A It looks like one of Sheila's. She had -- Sheila had  
15 -- originally had hoops and she had went to some longer  
16 dangling nipple rings so she transferred from hoops to the  
17 dangling ones.

18 Q What did she have in her breasts on the day of her  
19 death?

20 A The dangling ones.

21 Q Now you call 911. They tell you to get her out of the  
22 tub, get her out of the tub. And if I understand your  
23 testimony, you couldn't. You got her halfway out and then  
24 what happened?

25 A Every time I pull her up, something would jerk her back



1 down in there. Every time I'm trying to yank her out and  
2 something's yanking her back down. I'm pulling and the lady  
3 said, look, you've got to get her out of there. She said put  
4 your arms around her waist or abdomen or something and yank  
5 her. I was kind of afraid because while I'm -- while I was  
6 pulling her up around her head and the top area, I thought I  
7 heard something pop or snap or something so I'm afraid. But I  
8 step over into the tub, reach down around her and --

9 Q Go ahead, Mr. Braswell.

10 A One yank I pull her on out and I get her on the side of  
11 the tub and so she's now resting on the side of the jacuzzi.

12 Q Now you make a lot of calls.

13 A Uh-huh.

14 Q At some point the police arrive; is that correct?

15 A Uh-huh.

16 Q And why did you not tell this to the police and to the  
17 paramedics?

18 A Tell them about the fixie?

19 Q Yeah.

20 A It's not something that me and Sheila shared with folks  
21 openly. That ain't something we talked about. That ain't  
22 something that I would want known. Sheila would have never  
23 wanted me to tell folks that we were having anal sex and oral  
24 sex and choking and asphyxia. And to tell you the truth, to  
25 talk about it now, it kind of feels like I'm dragging her name

1 through the mud or dishonoring her. Can I say something else,  
2 too?

3 Q Go ahead.

4 A Let me give you one of the biggest reasons. One, I  
5 never thought I would have been charged with her death. Two,  
6 one of the headlines read --

7 MS. WEIRICH: Objection, Your Honor.

8 Q You can't tell us what the headlines say or what anyone  
9 else says, Mr. Braswell. Let me ask you the question. When  
10 you -- did they have to handcuff you to take you down to  
11 homicide or how did you go?

12 A I went in a car with Bobby, her brother.

13 Q The police didn't take you down there, did they?

14 A No.

15 Q Did they issue a warrant for you to come down?

16 A No.

17 Q Did you go voluntarily?

18 A Yes.

19 Q Did you say I'm not going to talk to y'all?

20 A No.

21 Q What did you tell them?

22 A I answered all the questions they asked me.

23 Q Okay. Now did there come a point where you wanted to  
24 give them the rest of the story?

25 A Yeah.

1 Q What happened? Why didn't you?

2 A Glen and --

3 Q When you say Glen, who is Glen?

4 MS. WEIRICH: Objection, Your Honor.

5 MR. J. BAILEY: What's the objection? I just  
6 asked him who's Glen. He said Glen.

7 MS. WEIRICH: May we approach?

8 THE COURT: You may.

9 (Bench conference commenced.)

10 MS. WEIRICH: Obviously he's going to answer that  
11 these lawyers told me not to and our objection is that that's  
12 hearsay.

13 THE COURT: Well --

14 MS. WEIRICH: I don't know if that's the answer.  
15 I'm just anticipating it.

16 THE COURT: I assume that's what the answer will  
17 be. And I do think that at this point since an issue has been  
18 raised by the State with regard to why he failed to tell or --  
19 the version he told the police, these would be the version  
20 he's telling us now that he -- that this would be introduced  
21 not so much for the truth of it but to rebut the suggestion  
22 that he just this week came up with this version so I'll  
23 overrule the objection.

24 MR. J. BAILEY: Thank you, Your Honor.

25 (Said bench conference concluded.)

1 Q Do I need to restate my question or do you remember?

2 A Restate it.

3 Q Why did you fail to go forward and tell the police the  
4 rest of what happened?

5 A On Saturday when they picked me up, it was Sergeant  
6 Miller at that time. Now he's Lieutenant Miller. He's asking  
7 me what happened. And I said I'll make a statement. I want  
8 my lawyers here. I want my attorney here. My attorneys came.  
9 They told me not to tell anybody. Keep my mouth shut. My  
10 lawyers told me don't say a word. I told him what happened  
11 and he said don't say anything. As a matter of fact, he told  
12 the officers that I wouldn't be making a statement.

13 Q And when you say "he," was that Mr. Wright?

14 A Yes.

15 Q Was that the same Mr. Wright that took the stand today?

16 A That's correct.

17 Q Now I'm going to move forward just a little bit, okay.  
18 You listened to and for the record -- you were in the  
19 courtroom when the CD what's -- for the record what was  
20 previously marked Exhibit 27 -- was played; is that correct?

21 A Uh-huh.

22 Q And of the jail calls that you made; is that correct?

23 A Uh-huh.

24 Q And you can't tell me what somebody told you, but is  
25 there a reason why you have a certain demeanor during those

1 calls?

2 A Uh-huh.

3 Q Would you explain that?

4 A You can't cry in jail. You can't. When they first  
5 arrested me, I was shocked. I was surprised. That was kind  
6 of like a dream. I didn't understand what in the hell what  
7 was going on. And I was distraught. And I was crying. They  
8 took all of my clothes, all of my possessions and threw me  
9 into a suicide ward. That's one of the things that happen  
10 when you cry in jail. So to this day, I haven't even been  
11 able to grieve Sheila's death. You can't cry in jail. I  
12 ain't been able to grieve the fact that I ain't been with my  
13 children in over a year. I ain't been able to grieve the fact  
14 of the first time I saw my momma in a year was when I walked  
15 in the courtroom the other day.

16 And if you cry in jail, you get taken advantage of. So  
17 you have to have a certain outward appearance. You have to  
18 have a certain image you project when you in jail. Ain't no  
19 crying. I made a mistake. Unless you in the shower, that's  
20 the only place you can cry. That's because water is already  
21 running on you.

22 Q All right. I'm going to pass you some items. I want  
23 you to first tell me if you can identify the items. We'll  
24 start there, okay.

25 A Uh-huh.

1 Q Can you identify that?

2 A Yes, it's one of our vibrators, one of the ones Sheila  
3 uses.

4 Q Where did it come from?

5 A Should have been in the nightstand on her side of the  
6 bed.

7 Q Did you purchase it?

8 A I think she purchased this one.

9 Q All right. Can you identify that as being one of the  
10 items that was in your home the day Sheila died?

11 A Yeah.

12 MR. J. BAILEY: May I ask that right now just be  
13 marked for ID purposes only.

14 THE COURT: All right. Exhibit 47.

15 (Exhibit No. 47 was marked for identification.)

16 Q I'm going to pass to you another item. Can you  
17 identify that item?

18 A Yeah. This is the shell of a butterfly.

19 Q What is a butterfly?

20 A A butterfly is a vibrator that Sheila would strap on  
21 around her legs so that -- and it will be up out of the way so  
22 that while we're having sex, she's being stimulated by the  
23 vibrator. The straps would fit around her legs and she would  
24 -- she would wear it.

25 Q Do you recognize that particular item?

1 A Yes.

2 Q And where was the last time you saw that particular  
3 item?

4 A In one of our nightstand drawers.

5 Q Okay.

6 MR. J. BAILEY: Your Honor, may we have that  
7 marked ID purposes only at this time.

8 (Exhibit No. 48 was marked for identification.)

9 Q Can you identify that item that's been passed to you?

10 A Yes.

11 Q Can you tell me what it is?

12 A It's the minibullet that comes with the butterfly.

13 Q What is a minibullet?

14 A A bullet is just something a woman use for direct  
15 stimulation. It doesn't go -- it's not like a vibrator that  
16 goes inside. It's just for stimulation of the clitoris.

17 Q All right. And do you recognize that particular item?

18 A Absolutely.

19 Q And when was the last time you saw that particular  
20 item?

21 A In our nightstand when we -- prior to Sheila's death.

22 MR. J. BAILEY: All right. May I have that marked  
23 for ID purposes at this time.

24 (Exhibit No. 49 was marked for identification.)

25 Q Do you recognize that item that's been passed to you?

1 A (Witness nodded head up and down.)

2 Q Did you purchase that item?

3 A I purchased this one.

4 Q And when is the last -- what is it, first of all?

5 A The name of it is the Nubby G. A woman's G-spot is --

6 Q Let me --

7 A It's for stimulating the G-spot.

8 Q And when is the last time you saw that item?

9 A I haven't seen this one in a while. We kept this one  
10 upstairs in the guest bedroom.

11 Q When you say "upstairs in the guest bedroom," at what  
12 address?

13 A At our house.

14 Q The Creekside address?

15 A Absolutely.

16 Q And where was that item on November 5th?

17 A Upstairs.

18 Q Of 2004?

19 A This was upstairs.

20 Q Where was it on November 4th of 2004?

21 A Upstairs.

22 MR. J. BAILEY: May I have that marked, Your  
23 Honor.

24 (Exhibit No. 50 was marked for identification.)

25 Q Can you identify that item?



1 A Yes.

2 Q What is that item?

3 A It's a regular -- it's what's called an egg.

4 Q Is it a sex toy?

5 A It's a bullet, yeah.

6 Q And do you recognize that particular one?

7 A Absolutely.

8 Q And when was the last time you saw that item?

9 A One of the nights preceding Sheila's death. This we  
10 kept in the nightstand next to the bed.

11 Q Now when you talk about the nightstand next to the bed,  
12 how many nightstands were next to your bed?

13 A Two.

14 Q On either side of the bed?

15 A Yes.

16 Q And were those nightstands -- were these items in which  
17 nightstand?

18 A The bullet would have been in hers. The butterfly  
19 would have been in hers. All these would have been in hers,  
20 the ones you've given me would have been hers.

21 Q And I think you testified one item was upstairs?

22 A Uh-huh.

23 Q Okay. I'm sorry?

24 A I didn't say anything.

25 Q I want you to tell me whether or not you can identify

1       these items.

2       A       Yeah.

3       Q       Where were those items retrieved?

4       A       This one would have been in my nightstand. This one  
5 would have been upstairs.

6       Q       How do you know the difference?

7       A       This one is rubber. This one is rubbery. This one is  
8 leather strands. She liked to rub them on --

9       Q       Now earlier today you heard the testimony of Ms.  
10 Sheronda Smith; is that correct?

11      A       Uh-huh.

12      Q       And I asked Ms. Smith on cross-examination about you  
13 all attending a -- an event in North Carolina and your being  
14 at an S and M stand or kiosk or whatever, a display I think  
15 was what my question was.

16      A       Uh-huh.

17      Q       Were these the kind of items that were at that kiosk or  
18 that display?

19      A       This one actually came from North Carolina. This one  
20 did. And I bought another flogger while we were there and  
21 wore it out. It just unraveled and broke.

22      Q       And are those the items that she was testifying she saw  
23 you looking at?

24      A       Uh-huh.

25      Q       When you say "uh-huh," you have to say yes or no.

1 There's someone typing this.

2 A Yes, I apologize. Yeah. Actually, they were having a  
3 whole S and M convention there.

4 Q Did you know that before you went?

5 A Had no idea. Didn't have a clue.

6 Q But when you got there, did it spark your interest?

7 A To say the least.

8 Q And did Sheila look at those displays or go to that  
9 display with you?

10 A Uh-huh.

11 Q Sir?

12 A Yes, I apologize, yes.

13 Q Before I go any further --

14 MR. J. BAILEY: Would Your Honor indulge me one  
15 moment, please?

16 DEFENDANT BRASWELL: Your Honor, some water,  
17 please?

18 Q Would you explain how those floggers were used? How  
19 are they used? How would you use them?

20 A Three ways. One, either popping with the leather part.  
21 Two, popping with the plastic part. Three, is just a dragging  
22 over the skin.

23 Q Did you and your wife use those?

24 A Yeah. This one had a few more leathers than this one  
25 before we started, I think.

1 MR. J. BAILEY: Your Honor, I'm going to move to  
2 admit each one of those items into evidence.

3 THE COURT: All right. Are you asking that these  
4 be marked for ID purposes only?

5 MR. J. BAILEY: Move them into evidence.

6 THE COURT: All right. Are you asking to remove  
7 the ID designation from the previous several?

8 MR. J. BAILEY: Yes. I'd like to remove the ID  
9 designation for the record and have them entered into  
10 evidence.

11 THE COURT: Okay.

12 (Exhibit No. 51 was marked and filed.)

13 (Exhibit No. 47-50 were marked and filed.)

14 (Exhibit No. 52 was marked and filed.)

15 THE COURT: All right. Mr. Bailey.

16 MR. J. BAILEY: Yes, Your Honor.

17 Q Now can you explain the significance of the body  
18 piercings that both you and Ms. Braswell had?

19 A Yeah, anything -- when your nipples or other body parts  
20 are pierced, it heightens the sensitivity. So let's say if  
21 I'm kind of sensitive, my nipples once they're pierced, I'm  
22 super or hypersensitive. That's the nature of it.

23 Q Now you had a white bathrobe on, I think that was the  
24 testimony, when the paramedics arrived. I think their  
25 testimony was you were in the front yard flagging them down or

1 waving them down or something of that nature?

2 A Yes, sir.

3 Q At what point did you put that bathrobe on?

4 A When I heard the sirens. I knew I was going to have to  
5 go let them in. So when I run by the bed, I just grabbed the  
6 bathrobe. They sat on the poles of our beds. Grabbed it,  
7 threw it on.

8 Q Was your body visible under that bathrobe?

9 A Yes.

10 Q Was it tight around you?

11 A No.

12 Q Did the police ever ask you to -- to take your clothes  
13 off so that they can look at your body?

14 A No.

15 Q Did you submit to DNA sampling?

16 A I did.

17 Q Voluntarily or did they have to make you?

18 A Voluntarily.

19 Q Who was present in the room with you?

20 A Sergeant Merritt, another female officer from homicide  
21 and one of my lawyers.

22 Q Which lawyer?

23 A You were.

24 Q Now when you came in this jail, did you have to get any  
25 kind of medical attention for scratches or bruises?

1 A No.

2 Q Were you bleeding?

3 A No.

4 Q I want to show you something. I want you to take a  
5 look at both -- well, three things. For the record -- let's  
6 just do them one by one. First, I'm going to pass you what's  
7 previously been marked as Exhibit 19. You recognize what's in  
8 that picture; is that correct?

9 A Yes.

10 Q Now what -- what's in the picture?

11 A TV and VCR.

12 Q Where was the picture taken? I guess I should ask  
13 that.

14 A In our bedroom.

15 Q Okay. And it's kind of cluttered; is that correct?

16 A Junky.

17 Q Is that how y'all's house always was?

18 A Yes.

19 Q Was it like that on November 3rd?

20 A Yes.

21 Q Was it like that on October 3rd?

22 A If we wasn't expecting visitors, yes.

23 Q Likewise, I'm going to pass you Exhibits 17, 20 and 24.

24 Do you see anything unusual about your home in those pictures?

25 A No.

1 Q Is the ironing board turned over on the floor?

2 A No.

3 Q Are things knocked off the vanity like there's been  
4 some kind of struggle?

5 A No.

6 Q Now I'm going take you through the phone calls that you  
7 heard, briefly. On one call your mother asked you about  
8 insurance and you stated you didn't know who the beneficiary  
9 was and you didn't know how much it was.

10 A That's correct. My mother had my children at that time  
11 and she was asking about insurance and financial stuff.

12 Q Why?

13 A She had my children.

14 Q When you say "she had my children," what did that mean?

15 A She had William and Miles in her custody and that's who  
16 I left them with. And then if somebody was going to pay the  
17 house note, it was going to be my mother and so she wanted to  
18 know what she was going to have to work with.

19 Q Speaking of that, now Lieutenant Miller testified that  
20 you were at a football game at Bolton High School when you  
21 were arrested. Who was playing in that game?

22 A My children.

23 Q And why did you take your children to the game?

24 A Because they was going to get a trophy and they didn't  
25 want to miss out on they trophy.

1 Q Were you callously over there watching some football  
2 game cheering rah, rah?

3 A No.

4 Q Was Bolton High School playing?

5 A No.

6 Q How old were the children in that football game?

7 A Miles is five and William was seven.

8 Q Now Sheila filed for divorce in June of 2004; is that  
9 correct?

10 A Correct.

11 Q Did you all -- did you file a (indiscernible)?

12 A No.

13 Q Did you hire a lawyer?

14 A No.

15 Q Why?

16 A She told me don't worry about it.

17 Q Did she take you down to the courthouse and have the  
18 judge put you out the house?

19 A No.

20 Q Now on one call there's a discussion about -- that you  
21 heard that was played before this jury, there was a discussion  
22 about "papers," I quote, and bank account records being  
23 shredded. Why did you tell them -- I think it was Brian or  
24 Papa Bear, why did you tell Brian and Papa Bear to shred the  
25 records?



1 A No, it was my brother.

2 Q Why did you tell your brother to shred the records?

3 A Because I have sensitive stuff on it. That bank  
4 account number is on it and social security number is on it.

5 Q And who was packing your house?

6 A My brother was.

7 Q Were there other people going in the house?

8 A Absolutely. I didn't know how many keys were out  
9 there.

10 Q Where is Sheila's car right now?

11 A I don't know.

12 Q Where is your vehicle?

13 A I don't know. One has been taken away.

14 Q So is it your testimony that's why you told them to  
15 shred all those financial records?

16 A Uh-huh.

17 Q Were you trying to hide anything?

18 A No.

19 Q Were you in bankruptcy?

20 A No.

21 Q Were you trying to get insurance money?

22 A No.

23 Q Have you filed for any insurance money to date?

24 A No.

25 Q Did you ever hire a lawyer and ask them to go open an

1 estate?

2 A No.

3 Q In fact, who's the beneficiary on Sheila Braswell's  
4 policies?

5 A If I'm not mistaken her mom, the boys and me.

6 Q Were you about to receive some \$350,000 or \$400,000?

7 A No.

8 Q Were your businesses in trouble?

9 A No.

10 Q Did you intend to leave your wife for Kristie Woods?

11 A No.

12 Q Did you pack a bag ever?

13 A Never.

14 Q Did Sheila pack a bag and leave?

15 A No.

16 Q As a matter of fact since 1996, has Sheila Braswell  
17 ever left your home?

18 A No.

19 Q Was Sheila in good relations with her own mother?

20 A Yes.

21 Q Do you know whether or not she was getting ready to  
22 move in with her mother?

23 A That's not the case.

24 Q She has a brother here in town, too; is that correct?

25 A That's correct.

1 Q His name?

2 A Bobby.

3 Q What's his whole full name?

4 A Robert Wade Franks.

5 Q And is that where your children are?

6 A (Witness nodded head up and down.)

7 Q Did Sheila move in with Robert Franks?

8 A No.

9 Q Mr. Braswell, are you here -- are you telling this jury  
10 that you were a fantastic husband?

11 A Never. Like I said, I made some mistakes, a lot of  
12 mistakes. I wasn't a perfect husband.

13 Q Were you even close to perfect?

14 A No, don't even claim to be.

15 Q Now one of the witnesses mentioned and I think you have  
16 now mentioned at one point you went to treatment; is that  
17 correct?

18 A Uh-huh.

19 Q And I'm almost through. Did you and Sheila have an  
20 opportunity to begin working with others in treatment?

21 A Uh-huh.

22 Q Don't say "uh-huh." You've got to say yes or no.

23 A I apologize. Yes, we did. I -- one of the neat or  
24 unique things about our marriage is that it was -- it was  
25 resilient. We went through troubles but then we would take

1       them troubles -- we would take lemons and make lemonade. I  
2       went through treatment. It didn't stop there. I began  
3       working with other people that had the same type of problems  
4       that I did when I was in treatment. She began working with  
5       wives and mothers that had the same type of problems that she  
6       had when she went through treatment.

7       Q       Was she a member of Al-Anon?

8       A       Yes.

9       Q       And for those ladies and gentlemen of the jury that  
10      don't know what Al-Anon is, would you explain that?

11      A       Al-Anon is for the families or loved ones of  
12      alcoholics. Frequently, we would be asked to come give a  
13      talk, come give talks. I would do the AA -- I would do the AA  
14      talk and she would do the Al-Anon talk.

15      Q       When was the last time -- how much sobriety do you have  
16      under your belt now?

17      A       The last time I took a drink or drug was in April of  
18      1996 when I put my hands on her. So this upcoming April I  
19      have ten years of continuous sobriety.

20      Q       In April?

21      A       (Witness nodded head up and down.)

22      Q       Now did you intentionally, cold-blooded with malice  
23      aforethought kill Sheila Braswell?

24      A       I absolutely did not. I didn't.

25      Q       Were you all arguing and you got out of hand and you

1 choked her to death?

2 A No.

3 Q And where were your children?

4 A In the bedroom across from ours.

5 Q Did you ever hear Sheila Braswell on November 4th or  
6 November 5th scream for help?

7 A No.

8 Q Did she run out of the house and go next door?

9 A No.

10 Q Was this an accident?

11 A Yes.

12 Q Mr. Braswell, when was the first time that you learned  
13 that your wife died from the act in which you were engaged in?

14 A When one of the lawyers came to see me after I was --

15 Q You can't tell us what anyone said but when was that?

16 A After I had been arrested. After I was put in jail,  
17 when Detective Miller picked me up from my children's football  
18 game, he brought me down and he alluded to strangulation.

19 Q Was that the first you'd heard of it?

20 A Absolutely first I heard of it.

21 Q What did you believe had happened up until that point?

22 A I didn't know what had happened. I didn't know.

23 MR. J. BAILEY: Would Your Honor indulge me one  
24 moment?

25 DEFENDANT BRASWELL: Excuse me, can I get some

1 more water, please?

2 THE COURT: One second. Some more water, please.  
3 Would you like a break? Step down. Leave the water there and  
4 step down behind your attorney. All right. Ladies and  
5 gentlemen, we will take a brief recess. As always, do not  
6 discuss the case during the recess.

7 (Jury out.)

8 THE COURT: We'll stand in recess.

9 (Recess.)

10 THE COURT: Step back around, Mr. Braswell.  
11 Resume the witness stand. Bring in the jury, please

12 (Vern Braswell resumed the witness stand,  
13 having previously been sworn.)

14 MR. J. BAILEY: Your Honor, can we put the  
15 exhibits on the exhibit table?

16 THE COURT: That's fine.

17 (Jury present.)

18 MR. J. BAILEY: Your Honor, I have one omitted  
19 question, just one.

20

21 DIRECT EXAMINATION CONTINUED

22 BY MR. J. BAILEY:

23 Q Mr. Braswell, what was -- when you were in treatment,  
24 what was your drug of choice that led you to treatment?

25 A Gin and crack cocaine.

1 MR. J. BAILEY: No further questions.

2 THE COURT: Ms. Weirich.

3

4 CROSS-EXAMINATION

5 BY MS. WEIRICH:

6 Q How tall are you?

7 A Five-four.

8 Q How much do you weigh?

9 A 195 now.

10 Q What did you weigh back on November 5th, 2004?

11 A I weighed about 170, 175.

12 Q All right. When did you meet Sheila Braswell?

13 A Around 1991.

14 Q Y'all began dating immediately?

15 A Yes, ma'am.

16 Q You were married in what year?

17 A 1994.

18 Q What year did you meet Kristie Woods?

19 A I met Kristie in 2002.

20 Q You were married?

21 A Correct.

22 Q You exchanged phone numbers with her?

23 A That's correct.

24 Q You met her on the street corner?

25 A That's correct.

1 Q You began calling her and you two began dating?

2 A That's correct.

3 Q You dated about eight months before you told her you  
4 were married; correct?

5 A Yes.

6 Q Eight months?

7 A That's correct.

8 Q You were still married; right?

9 A That's correct.

10 Q You and Sheila Braswell weren't separated, were you?

11 A No.

12 Q In fact during this whole marriage y'all never  
13 separated, did you?

14 A Only in 1995.

15 Q When she went to live with Ms. Harden?

16 A Correct.

17 Q The only time you claim; right?

18 A That's correct.

19 Q All right. I'll get to that in just a minute. When  
20 you met Kristie Woods and you two started seeing each other  
21 and dated for almost a year before you bothered to tell her  
22 you were married, you and Mrs. Braswell were still living  
23 under one roof?

24 A That's correct.

25 Q You said you're a hard sleeper; is that right? Was



1 that your testimony?

2 A Yes.

3 Q What do you mean by that, hard to wake you up?

4 A Correct.

5 Q You don't stir very easily?

6 A I don't understand.

7 Q You're a deep sleeper?

8 A Correct.

9 Q Did you ever tell Sheila Braswell about Kristie Woods?

10 A Yes.

11 Q When she found out about her; right?

12 A Yes.

13 Q Then you came clean on it; right?

14 A Yes.

15 Q When y'all were living in Millington, how long did you  
16 live there?

17 A From '94 up until '97, right at three years.

18 Q April of 1996 when the police were called to your  
19 house, do you remember that night?

20 A Yes.

21 Q You left; right?

22 A Right.

23 Q Where did you go?

24 A To do drugs and drink and get drunk.

25 Q You beat up Sheila Braswell and then you left the

1 house; right?

2 A That's correct.

3 Q She told the judge on the night of April 17th, 1996,  
4 around ten or 11, my husband and I had a dispute. What were  
5 y'all fighting about?

6 A Found out she had had an affair. I asked her about it.  
7 I didn't like the answers she gave me.

8 Q So you slapped her?

9 A (Witness nodded head up and down.)

10 Q Which resulted in a scratch on her cheek and sore  
11 jawbone. You then choked her. How did you choke her?

12 A Put her in a headlock.

13 Q How? Show me.

14 A Put her like this.

15 Q Pulled her hair?

16 A That's correct.

17 Q Was her hair long then?

18 A I don't remember.

19 Q You threw her up against the wall and a chair.

20 Remember that?

21 A No.

22 Q You choked her from behind. How did you do that?

23 A The only time I choked her was when I put her in a  
24 headlock.

25 Q So she made that part up about you choking her from

1 behind?

2 A I don't -- I can't recall.

3 Q Cutting off my air supply and told me to say my  
4 prayers. Remember saying that?

5 A No.

6 Q She made that up?

7 A I don't know. I don't remember saying it.

8 Q I tried to leave the first time at which time he  
9 restrained me. Remember that?

10 A No.

11 Q He tried to punch me several times. You remember that?

12 A Yes.

13 Q Some of which I was able to block. After having me on  
14 the kitchen floor, he took my wedding ring and diamond heart  
15 pendant and reported he would be paid alimony when we got  
16 divorced. Remember that?

17 A Yes.

18 Q I was able to leave the house and ran next door to a  
19 neighbors where 911 was called. The Millington Police  
20 Department came and took pictures. She then came downtown the  
21 next day with her mother and met with Judge Robilio and an  
22 order of protection was signed; right?

23 A That's correct.

24 Q Were you ever served with it?

25 A Yes.

1 Q Did you show up in court on May 10th?

2 A Yes.

3 Q At that point the judge issued the year-long order of  
4 protection; right?

5 A I don't remember. I remember us going down. We sat in  
6 a little room. Sheila and I, we talked about it. Said  
7 look --

8 Q Do you remember talking to the judge?

9 MR. J. BAILEY: He was trying to finish his  
10 answer.

11 THE COURT: Let him finish the answer.

12 Q I'm sorry, couldn't hear you.

13 A Sheila and I went down. We rode down there together.  
14 We met in a little room. We talked amongst ourselves, made  
15 our agreement. I would stop running the streets and getting  
16 high and getting drunk, and she wouldn't have anymore affairs  
17 and I wouldn't put my hands back on her again.

18 Q She -- I'm sorry, what?

19 A And we -- that was part of the agreement that I  
20 wouldn't put my hands back on her again.

21 Q Was part of the agreement that you were allowed to have  
22 affairs?

23 A No.

24 Q That was later on?

25 A No, I was wrong.

1 Q In 1995 was that when you were in rehab?

2 A That's correct.

3 Q She came to visit you at rehab?

4 A Correct.

5 Q You choked her then. Do you remember that?

6 A I don't remember that.

7 Q You deny that one?

8 A That's correct.

9 Q But you heard Magra Harden testify; right?

10 A I did.

11 Q And you admit that your wife lived with Magra Harden;  
12 right?

13 A That's correct.

14 Q That part of it you admit?

15 A That's correct.

16 Q But you don't know how your wife ended up with red  
17 marks all over her neck and a raspy voice?

18 A Sheila's voice was always raspy.

19 Q Did you hear Ms. Harden testify that her voice sounded  
20 differently after she came home from visiting you?

21 A I did.

22 Q Did Sheila Braswell visit you when you were in rehab?

23 A She did.

24 Q In 1997, I believe, Ms. Braswell was pregnant with your  
25 first child; is that right?

1 A Absolutely.

2 Q Y'all got in a fight?

3 A No.

4 Q Never?

5 A No.

6 Q You drug her down the stairs by her hair?

7 A No.

8 Q You didn't do that? She packed her belongings and ran  
9 to her sister-in-law and brother-in-law's house. You don't  
10 remember that?

11 A No, that did not happen.

12 Q That did not happen. There wasn't a time when she  
13 wasn't at home with you?

14 A During 1997 we lived in Millington all the way up until  
15 September, maybe August. There wasn't a time that she was  
16 pregnant that we wasn't together. She did not leave at any  
17 time during she was pregnant.

18 Q Why would you call over to the Cole's looking for her?

19 A I don't recall that. Now in 1996 she was having some  
20 contact with her when we had the problems in Millington she  
21 did, in 1996. Nothing from 1997.

22 Q Do you remember your bond hearing this summer?

23 A I do.

24 Q In front of Judge Dailey?

25 A I do.

1 Q You were asked the question: Who was Kristie Michelle  
2 Woods? Do you remember me asking you that question?

3 A I do.

4 Q Do you remember what you told me?

5 A Yes.

6 Q What did you tell me?

7 A A member of the motorcycle club.

8 Q That's right. She's someone you had a relationship  
9 with. Do you remember me asking you that?

10 A Uh-huh.

11 Q Do you remember your answer?

12 A Uh-huh.

13 Q What did you tell me?

14 A My answer was -- and I was a smart-ass and I shouldn't  
15 have -- I should not have said it, but I snidely said I have a  
16 relationship with all the members of my motorcycle club.

17 Q I had a relationship with all the members of the club.  
18 I was the president. Is that what you told Judge Dailey?

19 DEFENDANT BRASWELL: May I finish my answer?

20 Q Is that what you told Judge Dailey?

21 A Yes, but I --

22 Q And I asked you --

23 MR. J. BAILEY: Your Honor, he's trying to finish  
24 his answer.

25 THE COURT: All right. Finish your answer.

1       A     Like I was saying, I was wrong. I was being indignant  
2     and I was being a smart-ass and I was wrong.

3       Q     You also weren't being very truthful, were you?

4       A     Beg your pardon?

5       Q     You also weren't being very truthful, were you?

6       A     I was being evasive.

7       Q     I asked you: Was she someone you had a romantic  
8     relationship with? And then you finally said, Yes.

9       A     That's correct.

10      Q     I asked you: At the time your wife died, do you  
11     remember that?

12      A     That's correct.

13      Q     Remember what you told me?

14      A     I told you no.

15      Q     You told me, No. I asked you: When did it end? When  
16     did it end?

17      A     In June -- June, July 2004.

18      Q     That wasn't true either, was it?

19      A     That was the truth.

20      Q     Didn't you call Kristie Woods the night of November  
21     4th, 2004, and tell her you love her?

22      A     No, she called me.

23      Q     Did you tell her you loved her?

24      A     No, I didn't.

25      Q     She made that part up?



1 A She had to have had.

2 Q Was she supposed to come by your school the next day  
3 and pick up some keys from you?

4 A That's correct.

5 Q But your relationship was over?

6 A Correct.

7 Q Did you ever pay her any money for working at the club?

8 A If it were the case that I had a rental and I needed  
9 somebody there to open it and to close it, I give her a  
10 portion of the money from that rental.

11 Q Pass you Exhibit 4. Is that your wife's writing?

12 A It is.

13 Q Is that y'all's checking account?

14 A It is.

15 Q What's the date on that check?

16 A October 24th, 2004.

17 Q Thank you. If I could have that back, please. How  
18 many cell phones did you have back on November 4th and 5th,  
19 2004?

20 A Two or three.

21 Q One was a Nextel. What were the others?

22 A The Cricket.

23 Q Well, if you had three what was the third one?

24 A Another one was a Tungston that I seldom used.

25 Q That you what?

1 A That I very, very, very seldom used.

2 Q June of 2004 when you say your relationship with  
3 Kristie Woods ends; right?

4 A That's correct.

5 Q What day did it end? Do you remember?

6 A I don't remember.

7 Q All right. June of 2004 you two are at a club?

8 A That's correct.

9 Q You get upset?

10 A That's correct.

11 Q You put your hands on her neck?

12 A Yes, I put one hand on her neck.

13 Q She told you, you were holding a little too tight?

14 A Yes.

15 Q You let go and you pushed her and she left?

16 A I left first. I don't know what she did when I left.

17 Q Did you continue to see her after that?

18 A I did continue to see her. It wasn't --

19 Q Did you keep -- I'm sorry.

20 A I did continue to see her. It wasn't as romantic as it  
21 initially was. I was -- when she did that stuff, I should  
22 have scaddled and I didn't. I did keep seeing her in some  
23 shape, form or fashion. I did keep communicating with her.

24 Q Did you keep calling her?

25 A Our boyfriend/girlfriend/mistress relationship was

1 done. She would -- she would call me and I don't feel like  
2 living and she'd be depressed and I felt pretty responsible in  
3 that relationship. I was the older person. She was younger.  
4 I should not have -- one, I shouldn't have been having an  
5 affair. Two, I should not have been involved with somebody  
6 that young and I was wrong.

7 Q Did you call her "The Soldier"?

8 A That's correct.

9 Q Did you call her "The Rabbit"?

10 A We referred to her as "The Rabbit."

11 Q Did you call her "your favorite cousin" when you talked  
12 to her from the jail?

13 A That's correct.

14 Q Did you tell her you dreamt about her at night when you  
15 called her from the jail?

16 A That's correct.

17 Q September or October of 2004 you went to her house;  
18 right?

19 A Uh-huh.

20 Q You were mad because she was seeing some man down in  
21 Oxford, Mississippi; right?

22 A No, that's not correct.

23 Q You deny that?

24 A That's correct. I deny that.

25 Q You went to her house?

1 A Yes.

2 Q Did y'all have an argument?

3 A Yes.

4 Q Did you shove her down on the couch?

5 A No.

6 Q Did you push her up against the wall?

7 A No.

8 Q Did you push her head up against the wall?

9 A No.

10 Q Did you grab her by the neck and throw her head against  
11 the glass coffee table?

12 A I did not.

13 Q What did you do if you had this altercation?

14 A I went. I fussed at her. I said, I told you, leave my  
15 wife alone. Leave her alone. I grabbed her on the neck. I  
16 said leave her alone and that was it. That was from the back.

17 Q And that was it?

18 A I said leave her alone.

19 Q And then you left?

20 A I did some more cursing, told her I wasn't going to see  
21 her no more, deal with that, did some more fussing and I left.

22 Q Did you keep telling her during all these months before  
23 your wife ended up dead in the bathtub that you were going to  
24 make things right? Did you tell her that?

25 A Yes. May I explain?

1 Q Did you tell her that?

2 A Yes, I did. May I explain?

3 Q I'm going to pass you a picture.

4 MR. J. BAILEY: Your Honor, he's entitled to  
5 explain.

6 MS. WEIRICH: It's a yes or no question, Your  
7 Honor.

8 MR. J. BAILEY: He can answer yes or no and then  
9 he can explain.

10 THE COURT: He may explain. Go ahead.

11 A One of the things I kept telling her was that, look,  
12 after those two incidents was that we could only be friends  
13 and that's all we could be is friends. Yes, I slept with her  
14 some more. We even went out a time or two again, but I was  
15 drilling in her head we can only be friends. And I told her I  
16 was going to make all this stuff right. I was telling her  
17 that we would only be friends and that's platonic friends. No  
18 sex, no nothing. At that point Sheila -- on direct when Mr.  
19 Bailey was talking to me, I talked about how I was moving  
20 Kristie away from the records. Sheila was becoming an active  
21 part of my business endeavors and business ventures. And I  
22 just wanted Kristie away, out. I would only be her friend and  
23 we was going to keep it and have it platonic, no sex, no  
24 nothing. Why I still remained her friend because I felt  
25 guilty and I felt wrong. I felt to some extent I had

1 manipulated her. That was it.

2 Q You finished?

3 A Yes.

4 Q When you were in custody, how many times did you talk  
5 to her?

6 A I don't remember.

7 Q More than once?

8 A I don't remember. Maybe three, four. I don't  
9 remember.

10 Q The jury heard a few of the calls. You'd call her at  
11 work; right?

12 A That's correct.

13 Q You'd make sure every time you'd talk -- now who is  
14 Para Bear?

15 A Darnell Gardner.

16 Q Who is he?

17 A I've known Darnell about ten years and we done some  
18 community stuff together and he became a member of the  
19 motorcycle club. And with him being an older gentleman, we  
20 kind of gravitated towards each other, more so than me and the  
21 younger guys.

22 Q And he's a friend of yours?

23 A That's correct.

24 Q And he kind of kept tabs on Kristie Woods while you  
25 were locked up, took care of her?

1 A What do you mean when you say "took care of her"?

2 Q Made sure she was underground?

3 A No.

4 Q Who did that?

5 A Her mother.

6 Q Okay. At your request?

7 A No.

8 Q Just came up with that on her own?

9 A I don't know.

10 Q Well, you asked about it in those phone calls?

11 A Yes, I did.

12 Q Make sure she was; right?

13 A I don't remember.

14 Q Okay. I'm going to ask that two pictures be passed to  
15 you. Do you recognize those?

16 A Yes.

17 Q What are they?

18 A One is a picture of my bed and one is a picture of  
19 Sheila laying on the floor.

20 MS. WEIRICH: Judge, I'd ask that those be moved  
21 into evidence as the next numbered exhibits.

22 MR. J. BAILEY: Your Honor, may we approach for a  
23 second?

24 THE COURT: All right.

25 (Bench conference commenced.)

1 MR. J. BAILEY: I didn't want to say anything out  
2 loud, but I'm asking Ms. Weirich to start showing us the  
3 pictures or whatever it is just briefly before she passes it  
4 up. I didn't want to say anything in front of the jury.

5 MS. WEIRICH: I'm sorry. These were pictures I  
6 didn't know if they were already in evidence or not and I was  
7 just doubling up.

8 THE COURT: Let's do that in the future.

9 (Said bench conference concluded.)

10 THE COURT: All right. Exhibits 53 and 54.

11 (Exhibit No. 53 was marked and filed.)

12 (Exhibit No. 54 was marked and filed.)

13 Q Who's R. Fifer?

14 A Was Captain was a Captain. Lieutenant Fifer. He's the  
15 gentleman that I spoke of that is at the Orange Mound CO-ACT.  
16 He's kind of like the commander or the policeman that ran the  
17 Orange Mound CO-ACT, which was like a little police substation  
18 next door to Hanley Elementary.

19 Q You called him on November 5th, 2004; right?

20 A One second, please. Whenever we would come across some  
21 strange or unique situations at Hanley, if little Johnny was  
22 having some home problems and we needed some help, I would --

23 MS. WEIRICH: Objection, Your Honor,  
24 nonresponsive.

25 THE COURT: I'm going to sustain that. Mr.



1 Bailey, he's entitled to explain an answer as long as it's  
2 concise and responsive, but he's not entitled to just launch  
3 off on a longer nonresponsive explanation so I'm going to  
4 sustain that objection and instruct the witness to answer the  
5 question directly.

6 Q You called Captain Fifer on November 5th, 2004, around  
7 4:40 in the morning; right?

8 A That's correct.

9 Q Did you call his cell phone or home phone? Do you  
10 remember?

11 A I don't know which number was stored in my cell phone.

12 Q All right. Talked for 647 seconds; is that right?

13 A No, that's not correct.

14 Q That's not right? If the records show that from the  
15 phone company, that's wrong?

16 A When he answered the phone, I told him, I said Captain  
17 Fifer --

18 MS. WEIRICH: Objection, Your Honor, to what was  
19 said out of court.

20 MR. J. BAILEY: She asked him.

21 MS. WEIRICH: I asked how long they spoke.

22 THE COURT: Sustained.

23 Q How long did you speak to him if it wasn't as the phone  
24 company recorded it?

25 A I spoke to him for a few seconds and then handed the

1 phone to someone else.

2 Q And you talked to -- called John Mitchell; right?

3 A That's correct.

4 Q You called John Mitchell at 3:55:57; right?

5 A That's correct.

6 Q At 737-6100. Is that his home number or cell number?

7 A I don't know. I don't know. The names or the numbers  
8 are stored in my cell phone just under his names. I don't  
9 know when I was hitting seeing for his name. I don't know if  
10 it was dialing his cell phone or home number. I don't know  
11 which is which.

12 Q Then you called back at 3:56:47; right?

13 A Correct.

14 Q Then you called back at 3:57:17; right?

15 A That's correct.

16 Q And then you called 911 at 3:57:48; right?

17 A That's correct.

18 Q When did your neighbor come over?

19 A I don't remember. It was after the ambulances and  
20 paramedics and EMTs had got there. He called --

21 Q When was your neighbor -- I'm sorry, what?

22 A He called first to see what was going on and came  
23 directly over.

24 Q So he had a phone, your neighbor?

25 A He called me from his house.

1 Q Right. He had a phone at his house. And what was his  
2 name?

3 A Jim.

4 Q Jim what?

5 A Herbert.

6 Q All right. How long had he been your neighbor?

7 A Seven years.

8 Q Who is Frank Cotton?

9 A Frank Cotton is a Lieutenant or some officer. I don't  
10 know his office, but he works for the Memphis Fire Department.

11 Q Did you know him through your fraternity, too?

12 A I did.

13 Q Did you call him that morning, too?

14 A I don't remember if I called Frank or not. I know I  
15 talked with him later in the day and he also came by.

16 Q After the paramedics and everyone cleared the scene and  
17 you were asked to come down here, who brought you down here?

18 A Bobby.

19 Q Who is Bobby?

20 A Sheila's brother.

21 Q You weren't under arrest?

22 A That's correct.

23 Q They just asked you to come down; right?

24 A That's correct.

25 Q You were in a room?

1 A Correct.

2 Q With Sergeant Merritt?

3 A Yes.

4 Q And Lieutenant Miller?

5 A Yes.

6 Q And then eventually a woman came in to type down what  
7 you said; right?

8 A Correct.

9 Q I'll pass you Exhibit 28. Do you recognize that  
10 document?

11 A I do.

12 Q Is that your writing in red?

13 A Yes.

14 Q Is that your signature on the last page?

15 A Yes.

16 Q Thank you. If I could have that back, please. Were  
17 you given an opportunity to look over this?

18 A I was.

19 Q Were you given an opportunity to make any changes,  
20 corrections, deletions or additions that you wanted to?

21 A I believe I was.

22 Q All right. And that's what you did here in red; right?

23 A It appears, yes.

24 Q That's your writing?

25 A Yes.

1 Q Where you corrected certain things?

2 A Yes.

3 Q And then they let you go; right?

4 A That's correct.

5 Q The next day you're at your son's football game;  
6 correct?

7 A Yes.

8 Q Is that November 6th?

9 A Yes.

10 Q At Bolton High School?

11 A Yes.

12 Q And that's when you were placed under arrest; right?

13 A Yes.

14 Q Remember what time of day it was?

15 A It was in the morning.

16 Q Did they bring you back down here? Did they bring you  
17 back down here?

18 A Yes.

19 Q Take you back up to Homicide Office?

20 A Yes.

21 Q All these items that Mr. Bailey handed you on direct  
22 examination, do you see any of them in these crime scene  
23 pictures that you looked at?

24 A No.

25 Q These Skyy vodka bottles that the officers tagged, do

1       you remember these?

2           A       Yes.

3           Q       There was one on the ironing board; right?

4           A       Correct.

5           Q       One by the bathtub?

6           A       Correct.

7           Q       Who drank those?

8           A       Sheila.

9           Q       When?

10          A       She drank one of them before we got in the jacuzzi.  
11       She drank the other one as we were in there the first time.

12          Q       The last time you got in the jacuzzi was around what  
13       time?   2:45?

14          A       2:45 to three-ish.

15          Q       You had sex. Is that your testimony?

16          A       Yes.

17          Q       She was on her knees and you were on your knees?

18          A       Yes.

19          Q       Did she ask you to fix her?

20          A       Yes.

21          Q       What did you use?

22          A       Used my arm.

23          Q       Show me.

24          A       Put it around her neck in this fashion.

25          Q       How long?

1 A I don't remember.

2 Q Seconds? Minutes? Hours?

3 A I don't remember.

4 Q Then you got out of the tub; right?

5 A Yes.

6 Q You went and laid down?

7 A Yes.

8 Q What were you wearing?

9 A Nothing.

10 Q Did you doze off?

11 A I don't remember.

12 Q You don't remember if you fell asleep?

13 A Unh-unh. I may have dozed off. I don't remember.

14 Q But at some point you got up and went back in the  
15 bathroom; right?

16 A Yeah.

17 Q What time was that?

18 A It was about 3:40-ish.

19 Q What did you have on?

20 A Nothing.

21 Q Was she dead?

22 A She appeared to be.

23 Q You called 911; right?

24 A Uh-huh.

25 Q Eventually; right?

1 A That's correct.

2 Q Was there a phone in the bedroom?

3 A Yes.

4 Q Where were both your cell phones?

5 A On the -- on my vanity.

6 Q In the bedroom?

7 A In the bathroom.

8 Q So you had three phones back there?

9 A Uh-huh.

10 Q Right? Was her body stiff?

11 A Yeah, kind of.

12 Q You don't remember or what?

13 A Not -- I don't remember specifically.

14 Q Did John Mitchell live next door to you?

15 A No.

16 Q Did he live across the street?

17 A No.

18 Q Did Myron Fair live next door to you?

19 A No.

20 Q Did he live across the street?

21 A No.

22 Q What about Frank Cotton?

23 A No.

24 Q What about Fifer?

25 A No.



1 Q Isn't it true that some of these toys that you say were  
2 in your house, some of them you kept upstairs; right?

3 A That's correct.

4 Q Some of them you kept down in your bedroom?

5 A Correct.

6 Q Isn't it true that some of the toys that you kept  
7 upstairs, your wife didn't want to have anything to do with  
8 them?

9 A No, that's not the case.

10 Q You disagree with that?

11 A Yes, that's correct. I disagree with that.

12 Q When did this night of lovemaking start?

13 A Around midnight when we got in the jacuzzi.

14 Q So for over three hours you two were being intimate,  
15 off and on?

16 A Yes.

17 Q Were you both naked completely the whole time?

18 A Yes.

19 Q When you're talking to the 911 operator and we can hear  
20 you click over on another phone and say, I've got 911 on the  
21 phone, Bro, who were you talking to then? Do you remember?

22 A Brian.

23 Q Brian James?

24 A Uh-huh.

25 Q Your friend?

1 A Uh-huh.

2 Q You called him, too?

3 A Correct.

4 Q Did he live next door?

5 A No, but he --

6 Q Did he live across the street?

7 A No, but he is an EMT.

8 Q Did he come over?

9 A Yes, he eventually made it over there.

10 Q What time?

11 A I don't remember what time he arrived.

12 Q Did you ever find that nipple ring you couldn't find?

13 A Yes.

14 Q Where was it?

15 A Inside of my shirt.

16 Q It's not the one that's in evidence?

17 A No.

18 Q Where is it?

19 A It's over in the jail.

20 MS. WEIRICH: I don't have anything else.

21 THE COURT: Mr. Bailey.

22 MR. J. BAILEY: No redirect.

23 THE COURT: Step down. Call your next witness.

24 MR. W. BAILEY: Dr. Mark Schwartz.

25 MR. J. BAILEY: Can we take a brief recess, Judge?

1 THE COURT: All right. Ladies and gentlemen,  
2 we'll take a brief recess at this time. We'll call you back  
3 shortly.

4 (Jury out.)

5 THE COURT: Okay. Take the defendant out, please.  
6 Stand in recess.

7 (Recess.)

8 THE COURT: Bring in the jury, please.

9 (Jury present.)

10 THE COURT: Call your next witness.

11 MR. W. BAILEY: Dr. Mark Schwartz.

12

13 DOCTOR SCHWARTZ

14 called as a witness, being first duly sworn, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. W. BAILEY:

18 Q Sir, state your full name, please.

19 A Mark Schwartz.

20 Q And you are Dr. Schwartz; is that correct?

21 A That's correct.

22 Q Dr. Schwartz, where do you live?

23 A St. Louis, Missouri.

24 Q And your -- tell us what other association you have  
25 with St. Louis. Is your business address St. Louis?

1 A Yes.

2 Q And I believe you and your wife operate a psychological  
3 sexual treatment center there?

4 A We've been the director of Masters and Johnson Clinics  
5 in St. Louis, Missouri. We took over after Masters and  
6 Johnson retired and we've been the director of that for a  
7 number of years. And now we have a sexual and relational  
8 therapy clinic.

9 Q Let's go back with your curriculum and where did you go  
10 to college?

11 A Went to graduate school at Johns Hopkins University and  
12 did my internship in the department of psychiatry at Johns  
13 Hopkins.

14 Q And you graduated from Johns Hopkins?

15 A Correct.

16 Q And you got your Ph.D. from Johns Hopkins?

17 A That's correct.

18 Q And when did you obtain your Ph.D.?

19 A It's a doctor of science degree and I received it in  
20 1977.

21 Q All right. And would you share with us what  
22 educational institution with which you are associated?

23 A Yes. I'm in the department of psychiatry at St. Louis  
24 University and I teach the residents in psychiatry, sexual  
25 medicine. And I lecture throughout the country on the average

1 of 30 or 40 times a year to other professionals on sexual  
2 medicine.

3 Q What is sexual medicine?

4 A It's a subspecialty where we focus on the physiology of  
5 sexual behavior, the brain and how it relates to sexual  
6 behavior. And my particular specialty has been in sexual  
7 trauma and perpetrators of sexual abuse and sexual deviation.

8 Q All right. And how many hospitals have you -- you've  
9 been associated with several hospitals too as well?

10 A Correct.

11 Q What are those hospitals?

12 A Over the years I've been with St. Louis University  
13 Department of Medicine, Washington University School of  
14 Medicine, Tulane University School of Medicine, University of  
15 New Orleans, Johns Hopkins University School of Medicine. I  
16 think a couple others.

17 Q All right. And you've been director, I understand, of  
18 certain -- of several programs?

19 A Correct. I started a sex offender program in the  
20 prison system in the State of Missouri and I was working for  
21 probation and parole in a sex offender program for a number of  
22 years and was the director of the State of Missouri's child  
23 sexual abuse program and the State of Louisiana's child sexual  
24 abuse program.

25 Q All right. Now you also have been published?

1 A That's correct.

2 Q And of course you've had a number of publications, I  
3 understand?

4 A Several books and articles.

5 Q All right. And would you share with us the titles of  
6 some of those books?

7 A One of the books called *Sexual Abuse and Eating*  
8 *Disorder*. Second book is called *Gender Identity and Problems*  
9 *of Gender Identity*. And the articles range from the reason  
10 for paraphilias and some of the subspecialties of different  
11 paraphilia and how they manifest themselves, how to treat  
12 them.

13 Q And have you published many or few books?

14 A Two books.

15 Q Two books. And how many articles? Many or few  
16 articles?

17 A About 30 articles.

18 Q Have they been widely recognized?

19 A Yes.

20 Q In your field?

21 A One of them was the *Encyclopedia Britannica*.

22 Q Now also in terms of your qualifications, you have  
23 dealt with sexual deviant behavior, I believe?

24 A That's my specialty.

25 Q And would you explain to us what sexual deviant

1 behavior is?

2 A Individuals have a history of sexual abuse, sexual  
3 trauma, and then they go on to have fantasy and behavior,  
4 which is atypical. Sometimes it's of a fetish kind of nature  
5 where they like leather or cross-dressing or some sort of  
6 objects in sex. Sometimes it's the arousal patterns are  
7 deviant. They're aroused by children rather than by adults.  
8 They're aroused by unusual kinds of things like urination or  
9 somehow they like pain associated with sex called  
10 sadomasochism, that kind of deviant sexual behavior.  
11 Sometimes it's cross dressing and gender kinds of confusion.  
12 Sometimes fetishes, where there's a fetish and they like some  
13 sort of leather objects or whips involved in sex.

14 Q All right. Now you also have been involved with erotic  
15 asphyxiation, I understand?

16 A Yes, I've had a lot of experience with erotic  
17 asphyxiation.

18 Q Would you explain to the jury what that is?

19 A It's an activity that some people involve themselves in  
20 where they somehow limit the amount of oxygen going to the  
21 brain during orgasm. So it's anoxia during the sexual act.  
22 It enhances the pleasure. It decreases dopamine. It  
23 increases the endorphins and enhances the sexual arousal. And  
24 it's a pattern being used with increased frequency among  
25 adolescents, starting around the ages of 13 to 15 where they

1 learn about it through television and such and they begin  
2 trying it out on their own in masturbation and then involving  
3 themselves with partners.

4 Q I see. And also there is -- you've been involved with  
5 autoasphyxiation?

6 A That's the majority of cases is autoasphyxiation, where  
7 they're -- during masturbation they're somehow using some  
8 ligature around their neck to limit the oxygen or stopping  
9 somehow the breathing pattern in order to enhance their sexual  
10 arousal. Eventually, they'll take it on with partners and  
11 teach their partners how to do it and involved in activity.  
12 And so in my practice, you know, I'll hear about this as much  
13 as 20 times a year among patients. And then I've been  
14 involved in a number of cases where it's resulted in death.

15 Q So death -- is death one of the natural consequences of  
16 that practice?

17 A The problem with any addiction is that tolerance  
18 develops and the person needs more and more in order to get  
19 the same sexual arousal pattern. So part of the high is  
20 taking greater risks. And either a person has an accident or  
21 they push themselves to a point of too great of danger and  
22 they slip and they either kill themselves or they kill someone  
23 else.

24 Q Now let me ask you. You have had the opportunity of  
25 conferring with Mr. Braswell?



1 A I have.

2 Q And I believe you visited with him extensively?

3 A I wouldn't call it extensively. I met with him last  
4 evening for maybe two and a half hours.

5 Q And you got a history?

6 A Correct.

7 Q And would you share that history?

8 A Well, it would take a long time. You want me to go  
9 through the details of the history?

10 Q Would you summarize that history more or less?

11 A The history of what happened or the history of his  
12 life?

13 Q No, the history taken into -- in terms of the deviant  
14 pattern.

15 A Well, he reported to me that --

16 MR. W. BAILEY: Your Honor, before we get into  
17 that, I submit him as an expert in the field of deviant  
18 behavior.

19 THE COURT: Any voir dire?

20 MS. WEIRICH: No, sir.

21 THE COURT: You may proceed.

22 MS. WEIRICH: May we approach?

23 THE COURT: You may.

24 (Bench conference commenced.)

25 MS. WEIRICH: Judge, we would object on the

1 grounds of hearsay at this point to him launching into a  
2 dissertation of what the defendant told him.

3 THE COURT: Why wouldn't that be hearsay?

4 MR. W. BAILEY: It's part of the history. History  
5 is not hearsay. It's part of the history of which he draws  
6 his conclusions.

7 MS. CARNESALE: It's what he told him last night.

8 MR. W. BAILEY: His opinion.

9 THE COURT: His opinion of what? That your client  
10 is sexually deviant?

11 MR. W. BAILEY: Yes.

12 THE COURT: What is the purpose of calling this  
13 witness, I guess I need to ask that?

14 MR. W. BAILEY: The purpose of calling this  
15 witness is to have him -- is to elicit testimony that his  
16 conduct is -- on the night in question is consistent with  
17 erotic sexual asphyxiation.

18 THE COURT: Okay. Well that would not necessitate  
19 a diagnosis based on history.

20 MR. W. BAILEY: But history is important. It is,  
21 Your Honor, in terms -- with the expert it is. This is  
22 important information, his history, his sex history, her sex  
23 history.

24 MS. WEIRICH: It may be important to this witness,  
25 Judge, but I don't see how it gets around the hearsay.

1 was much more fond of it.

2 We talked about why that might be so. And we talked  
3 about the details of her rape, where she went to the  
4 university visiting her friend, went to the car and she was  
5 grabbed by the hair, pulled to the ground and told to take it.  
6 And the word "take it" was a very severe trigger for her and  
7 would send her into flashback and so he was very careful not  
8 to use those kinds of terms. But it seemed likely that this  
9 activity was related to a reenactment of some of her rape, as  
10 I got the details of that. She also got herpes from her rape,  
11 which I think made it injury -- insult to injury.

12 She after the rape could get in the shower with her  
13 clothes on, said she felt dirty and scrubbed and rubbed and as  
14 far as she knew she didn't get any counseling from a  
15 therapist. So I see her as having sort of a full-rape trauma  
16 syndrome.

17 He -- I asked him about the history of violence and he  
18 told me that there had been no violence between where he had  
19 strangled her in any way in the past five years and that there  
20 had been some activity when he was involved with alcohol and  
21 drugs of violence with her but that he had stopped that and  
22 that they were kind of in Al-Anon together and kind of leaders  
23 in Al-Anon together and that their relationship was excellent.  
24 On a one to ten scale, he rated it as an eight.

25 They did do swinging and had other partners once every

1 MR. W. BAILEY: It goes into the equation of his  
2 opinion.

3 MS. WEIRICH: I also see that he has documents in  
4 front of him, and I've asked Mr. Bailey and I've asked the  
5 witness repeatedly if he has a report and they've denied it.  
6 I don't know what these documents are.

7 MR. W. BAILEY: I still don't have a report as of  
8 this date.

9 MS. WEIRICH: Right. But I noticed he pulled some  
10 papers out of his pocket when he sat down.

11 THE COURT: And taken by your comment that he also  
12 plans to testify --

13 MR. W. BAILEY: Sir?

14 THE COURT: Does he also plan to testify as to  
15 what allegedly were her sexual patterns as well, based on what  
16 your client told him?

17 MR. W. BAILEY: He needs that history, yes. It's  
18 important history in terms of the sexual practice of erotic  
19 asphyxiation. He has to take the information as he acquires  
20 it.

21 MS. CARNESALE: Judge, everything he says is  
22 coming from the conversation he had with the defendant last  
23 night. This isn't like he's spoken with other doctors that  
24 have seen the defendant or researched the matter, investigated  
25 it. It comes from hearsay from the defendant for him to just

1 parrot it back to the jury.

2 MR. W. BAILEY: Well, I can assure Your Honor that  
3 we're going to confine it to his activities, his sexual  
4 activities. It's not going to be any different from what he  
5 said in the courtroom. I mean, there are no surprises if that  
6 was a concern. I can give it to him hypothetically in terms  
7 of what he testified to in the courtroom.

8 MS. WEIRICH: I guess my concern is that the  
9 sexual deviant behavior of the defendant, how is that relative  
10 -- or relevant, rather, if their whole defense is this is  
11 something that she wanted? I mean, where does it get us to  
12 launch us into this defendant's history for purposes of  
13 evoking sympathy from the jury. I don't know. I don't know  
14 what he's going to say because there's no report.

15 THE COURT: Perhaps we better have an out-of-jury  
16 hearing to determine the scope of this because I'm not really  
17 sure where we're headed with this or what the relevance would  
18 be for the purpose of this witness' testimony so let me send  
19 the jury out.

20 (Said bench conference concluded.)

21 THE COURT: Ladies and gentlemen, I'm going to  
22 excuse you for a few minutes. We'll call you back shortly.

23 (Jury out.)

24 THE COURT: Okay. Now that the jury is out, why  
25 don't you go ahead, ask the doctor about the history and we'll

1       revisit it.

2

3

DIRECT EXAMINATION

4

BY MR. W. BAILEY:

5

6

7

Q       Dr. Schwartz, based on your experience and training and  
specialization in the field of deviant behavior, you're  
qualified to recognize erotic asphyxiation, are you not?

8

9

10

A       I've been consulted by law enforcement officials to be  
at scenes of erotic asphyxiation and to consult them as to  
whether the crime scene is one of suicide or asphyxiation.

11

12

13

14

15

Q       So you're identified as what you do?

A       I specialize in that and I know the research literature  
on the comparison of cases of asphyxiation with suicide and  
what are the particulars. Oftentimes the crime scene is quite  
different.

16

17

18

19

Q       Very well. Now as part of -- and in your arriving at  
your opinion in terms of identifying or pinning on whether this  
is a case of sexual asphyxiation or not, erotic asphyxiation,  
is not the sexual history important?

20

21

A       The sexual history is critical for determining whether  
it's erotic asphyxiation or homicide.

22

23

Q       And in your discussions with the -- with Mr. Braswell,  
did he not provide you with his sexual history?

24

25

A       He gave me a comprehensive sexual history of his life  
and of his wife's life.

1 Q And is not that important -- would you not deem that  
2 important?

3 A It's one of the factors that's used in making a  
4 decision as to whether the case is one of asphyxiation or one  
5 of homicide. If you identify the scientific criteria to  
6 identify whether a case is asphyxiation versus suicide, there  
7 are about seven or eight criteria that have been well  
8 established in the literature. One of them is the sexual  
9 history.

10 MR. W. BAILEY: I tender the witness.

11

12 CROSS-EXAMINATION

13 BY MS. WEIRICH:

14 Q What else did you -- what else were you provided,  
15 besides access to the defendant?

16 A Beside access to what?

17 Q The defendant. What else were you given besides Mr.  
18 and Mr. Bailey?

19 A I was given the pictures of the crime scene, the  
20 drawings of what the people at the site drew, the medical  
21 report of the autopsy and I think that's it.

22 Q Do you have those things with you?

23 A No, I don't right now.

24 Q You didn't bring them with you?

25 A Not to the courtroom.

1 Q Are they here in the building?

2 A They're -- I left them back with my stuff, which is at  
3 the hotel.

4 Q In St. Louis or at the hotel?

5 A At the hotel, yeah.

6 Q What are the documents you have in front of you?

7 A Notes that I took while I was interviewing the client  
8 last night, just handwritten notes.

9 Q All right. And the other?

10 A The other is a criteria that -- the scientific criteria  
11 for evaluating the difference between autoerotic asphyxiation  
12 and suicide asphyxiation and how they relate to this case.

13 Q And when were you provided this material by Mr. and Mr.  
14 Bailey? When did they first contact you?

15 A Saturday night.

16 Q Saturday night or Sunday night?

17 A It was Saturday night. I told you Sunday but it was  
18 actually Saturday.

19 Q Okay. And they found you how?

20 A As an expert witness in the area of sexual deviation.

21 Q Right. But how did they locate you?

22 A By the web.

23 Q And then they shipped these things to you?

24 A E-mail.

25 Q Okay. All right. Did you talk to any witnesses?



1 A No.

2 Q Did you talk to any police officers?

3 A No.

4 Q You've only spoken with Mr. and Mr. Bailey and the  
5 defendant?

6 A Correct.

7 Q And then reviewed those few items that you mentioned?

8 A That's correct.

9 MS. WEIRICH: Judge, I don't have anymore  
10 questions, but I would ask that we be allowed to make a copy  
11 of whatever those documents are that he's relying on.

12 WITNESS SCHWARTZ: Of course.

13 MR. W. BAILEY: That's his personal notes, Judge.

14 THE COURT: Well, before we get to that, I really  
15 want to hear in this out-of-jury hearing a summary of what the  
16 -- of what the history was. That's what brought us to the  
17 bench to begin with, the objection to his reciting the history  
18 that he was told by your client in the two-and-a-half-hour  
19 conversation that he had last night. And so not every detail  
20 but sort of a summary of what you would anticipate his  
21 testimony to be with regard to the history.

22

23 REDIRECT EXAMINATION

24 BY MR. W. BAILEY:

25 Q Would you recite the history that you were told by the

1 defendant Mr. Braswell?

2 A Well, I began by asking him to describe what actually  
3 occurred. And what he said was that he and Sheila had a term  
4 just called "fixing" in quotes F-I-X-I-N-G, and that that  
5 meant that they were going to involve themselves in erotic  
6 asphyxiation. He said that he had found his wife doing this  
7 with a bathrobe during masturbation and had walked in and was  
8 sort of shocked some years ago. And when he found out more  
9 about it, they began to involve themselves and involve into  
10 erotic asphyxiation approximately two times a month. And  
11 they've been doing that for the last two years.

12 And I asked him why this hadn't come forth earlier, and  
13 he said that he felt like he'd rather die than drag his wife's  
14 name through the mud and that he said that he was thinking  
15 that he would like to just die rather than talk out loud about  
16 the violation of their privacy and to reveal this in public  
17 and particularly in front of her family.

18 So he didn't disclose the truth and sat in jail for  
19 almost a year. And I guess in that period of time he realized  
20 that he needed to tell the truth, whatever the consequences,  
21 and so he came forth with the real story.

22 He said that they had a very strong, intense sexual  
23 life and what he would do is he would use his arm and put her  
24 Adam's apple around the V in the chokehold and that they had a  
25 pattern where she would pinch him when she wanted more

1 pressure. She would tap when she wanted him to just stay at  
2 some constant level, and she would go down like this in a  
3 passive sort of way putting her arm down as a sign that she  
4 wanted him to stop. And it took them a period of time to  
5 coordinate this, sort of like learning how to dance, you have  
6 to get these signals down over a significant period of time  
7 and that over time he got better at it. But she would get  
8 very angry at him if he let go too soon because then it -- she  
9 didn't get the rushed orgasm.

10 And that -- that sometimes they would do this in the  
11 bed. Sometimes they would do this in the floor. Sometimes  
12 they would do this in the jacuzzi. And it's not uncommon for  
13 them to have multiple sexual activities in an evening. It was  
14 not uncommon for them to use whips and dildos, that she had a  
15 very large dildo that she used and produced pain for herself.  
16 And sometimes they brought other partners in.

17 Do you want me to say anything about or just keep -- so  
18 they would involve themselves in multiple kinds of acts;  
19 including oral sex, anal sex and they would do it in and out  
20 of the jacuzzi. She would use the jacuzzi to add clitoral  
21 stimulation and they had particular positions and he was able  
22 to illustrate each of the positions he would use, either from  
23 the floor or from the jacuzzi or from the bed or how she used  
24 the ligature around the bed by herself and she used the robe  
25 strap in order to be able to do it.

1 All of his details he could not possibly have known  
2 unless he had engaged in this activity. It's exactly what I  
3 hear from other clients and is reported in the literature.  
4 And the details were remarkably similar so it's one of these  
5 things I think with high degree of psychological certainty a  
6 person could not make up the details of this.

7 So he went into excruciating details and I asked him  
8 for very particular kinds of things about the way she  
9 straddled him and the way he straddled her that would be  
10 consistent with a history of this kind of abuse.

11 So that -- let's see. The way that she would indicate  
12 that he should stop is there was a finger drop kind of relax.  
13 And he illustrated how he would stimulate her breasts, that  
14 she liked pain. That's why she had the nipple piercing and I  
15 think some sort of belly piercing. And that she would use the  
16 vibrator during the activity. She would use the bathrobe with  
17 one loop around the bedpost and then release it.

18 He was afraid that she was involved with autoerotic  
19 behavior, that she would hurt herself and so he felt safer  
20 with him in the room because he felt somehow he could protect  
21 her. And that all this scared him because he is an addict and  
22 he knows what happens with a drug rush and he could get the  
23 same kind of rush with this that he could get with -- when he  
24 did drugs and that it scared him and that he was much more  
25 reluctant to get involved in the activity than she was. She

1 about two months. This is another form of sexual deviation  
2 that's consistent with this subtype of erotic asphyxiation. I  
3 went into some detail about the activity of whether she did  
4 any cutting on her body, which she did not. How she used the  
5 big vibrator. The details about whips and spanking and why  
6 there is the piercing.

7 I then began to ask the history of each of them. In  
8 summary, the -- the client Mr. Braswell has had a very  
9 traumatic history where his dad was looking for his mother and  
10 found out that she had been gone. Her brother wouldn't tell  
11 the father where the mother was so his dad shot his brother.

12 MR. J. BAILEY: Your Honor, may we approach one  
13 second?

14 THE COURT: Okay.

15 (Bench conference commenced.)

16 MR. J. BAILEY: There is an instance of where Mr.  
17 Braswell told Dr. Schwartz that he was molested by a family  
18 member that he does not want to waive his privilege on. He  
19 doesn't want that family member discovered. And I know -- I  
20 was there so I know what Dr. Schwartz is getting into. And I  
21 know Your Honor wants to hear it, hear the whole background,  
22 but that was one thing that Mr. Braswell just doesn't want  
23 this public to hear. He told -- and he told Dr. Schwartz last  
24 night that he was telling him that because he wanted to be --  
25 he answered all his questions but he did not want that made

1 public and he doesn't want it made public now. There's a  
2 family member that's here, Judge.

3 THE COURT: All right. I've heard enough to rule  
4 anyway.

5 (Said bench conference concluded.)

6 THE COURT: Okay. With regard to the objection to  
7 the Doctor recounting the history that he was told by the  
8 defendant when he interviewed him last night, I'm not sure we  
9 get any -- I'm not sure how relevant a specific recitation of  
10 that history is to the facts in issue in this case.

11 Now I do agree that -- and this is what I'll allow the  
12 Doctor to state. That he can state that after having  
13 consulted with the defendant for two and a half hours last  
14 night, that he's reached certain conclusions regarding whether  
15 the defendant practiced this sexual behavior that has been the  
16 focal point of the defense in this case and whether in his  
17 opinion, in his expert opinion, the history that was told to  
18 him by the defendant is consistent with someone practicing  
19 this sexual behavior, without the necessity of getting into  
20 all the details that were given about specifics that we didn't  
21 even hear from, from the defendant and about the history,  
22 about the wife's rape, about the father and the mother and  
23 things that went well beyond what the defendant himself even  
24 testified to. That certainly would not have been relevant had  
25 the defendant tried to testify to them on the stand himself.

1           So I'll allow you to ask in front of the jury if the  
2 doctor took a history, was it an extensive history or a  
3 cursory one. How much time did it take you to acquire that  
4 history and from that history did you reach certain  
5 conclusions regarding his sexual practices. And then we can  
6 go from there.

7           MR. W. BAILEY: And of course I can recount his  
8 testimony in court in terms of what he said, which is -- it  
9 seems to me important.

10          THE COURT: In terms of what?

11          MR. W. BAILEY: The sexual practices that he  
12 talked about in court.

13          THE COURT: Yeah. You can ask the doctor if that  
14 conduct would be consistent with this sexual diagnosis and let  
15 him -- is fine. But we're going to limit it to that though.  
16 We're not going to go off on these other -- into these other  
17 areas. Bring in the jury.

18          MS. WEIRICH: Judge, may we copy what Dr. Schwartz  
19 has brought with him?

20          THE COURT: Yes. We'll make a -- Officer  
21 Lafferty, could you borrow these notes from the Doctor and  
22 make a copy of them, please?

23          MS. WEIRICH: And the other notes.

24          MR. W. BAILEY: Well, Your Honor, would we not be  
25 getting into privileged communication between him and --

1                   MR. J. BAILEY: I was about to say that would be  
2 privileged.

3                   THE COURT: It pretty much seems to me like any  
4 privilege has been waived. I mean, we've already gone into at  
5 Mr. Bailey's request and attempt to go into the history that  
6 was given last night for two and a half hours. Then Mr. J.  
7 Bailey wanted to sort of qualify that testimony by not getting  
8 into some of what was -- we want to assert a privilege with  
9 regard to some of it but not all of it. So I don't know where  
10 y'all are coming from.

11                   Do you want him to get into these things or not? If  
12 you don't, he can step back down. If you want to get into  
13 some but not all because some are too sensitive, you know, I  
14 don't know where we're heading on this. Go copy them. If you  
15 want him to testify we're going to copy them. We're going to  
16 share them.

17                   There has been no report generated. Apparently, this  
18 man was just contacted five days ago and so the State's been  
19 without benefit of even his knowledge until this week. And so  
20 in fairness to them and consistent with your efforts to get  
21 into what he has gleaned thus far in his preparation for  
22 testimony, I'm going to copy these for the State's benefit.

23                   MR. J. BAILEY: I'll just state to the Court also  
24 before he brings in the jury and just for the record that I  
25 had Dr. John Hutson lined up to come here and he notified me



1 on Friday that after talking to his lawyers, he has a contract  
2 with Shelby County and when they looked at that contract, it  
3 prevented him from testifying -- being hired out privately.  
4 And that's why I had to let it -- we had to find someone else.

5 MS. WEIRICH: I was never notified of Dr. John  
6 Hutson.

7 MR. J. BAILEY: I mean, that's because he wasn't  
8 secured at that point.

9 THE COURT: All right. Give the originals back to  
10 the Doctor, please, and give the copy to the State.

11 (Jury present.)

12 THE COURT: All right. Mr. Bailey.

13 MR. W. BAILEY: Thank you, Your Honor.  
14

15 DIRECT EXAMINATION CONTINUED

16 BY MR. W. BAILEY:

17 Q Dr. Schwartz, you've given us your credentials and  
18 you've been accepted as an expert. Let me ask you to explain  
19 for the benefit of the jury exactly what is erotic  
20 asphyxiation?

21 A Erotic asphyxiation is a form of clay behavior that  
22 people indulge in to enhance erotic activity. What it does is  
23 it decreases the oxygen going to the brain and causes orgasm  
24 to be enhanced. Physiologically, it seems to decrease  
25 dopamine and increase endorphins and so it's like getting a

1 hit and a rush that's much like doing heroine or some major  
2 drug high. And once people get involved in it, it becomes  
3 addictive in nature. They tend to do it more and more  
4 frequent. They tend to need, as with any addiction, tolerance  
5 takes place. They need more and more danger in order to get a  
6 high. And so what they do is they take increased risks. And  
7 when they take increased risks, then often what's associated  
8 with it is it ends up killing them or killing the other person  
9 that's involved in it. It's very dangerous and it's one of  
10 those activities that is increasing in incidents.

11 There's been a three-fold increase in the last five  
12 years of measurable cases and we're afraid to talk about it in  
13 public because it begins in adolescents and as soon as you  
14 talk about it, adolescents start practicing it and trying it.  
15 So we're afraid to go on talk shows. I've been asked to go on  
16 talk shows and discuss it because as soon as you do, there is  
17 this huge increase in incidents of it. People want to do it  
18 to get a higher rush.

19 Q Now what mechanical devices are utilized in that  
20 process?

21 A There are multiple kinds of usages. In a crime scene  
22 you'll oftentimes find a ligature that they use around the  
23 neck. In this case there was a robe tie that was being used  
24 on her when she did it by herself so there is no other  
25 ligatures that were reported to me.

1           In this case the person used the Adam's apple against  
2     the V of the neck and that's a very effective form of erotic  
3     asphyxiation. Sometimes people hang themselves. Sometimes  
4     people use ropes and hang them around the bed. Sometimes they  
5     use the arm of the other person if they're doing it with  
6     activities. It depends on whether it's autoerotic or whether  
7     it's with a partner.

8       Q     Now assuming that -- let me also ask you, what is the  
9     significance of sex toys such as the ones you see displayed  
10    here?

11    A     In a statistical study where they look at large numbers  
12    of crime scenes where there is erotic asphyxiation versus  
13    strangulation or suicide or homicide, one of the most common  
14    features that distinguish the two of them is that individuals  
15    who involve themselves with erotic asphyxiation use other  
16    forms of sex play that is deviant and sex toys. And so  
17    finding dildos and finding some sort of whips, leather or some  
18    sort of objects that cause pain or discomfort with sex are  
19    highly associated with erotic asphyxiation.

20           The instruments that are on the table there would be a  
21    very important evidence to distinguish whether this was erotic  
22    asphyxiation or a homicide. And when you see that kind of  
23    paraphernalia, it leans on you the side of believing that it's  
24    an erotic asphyxiation case.

25    Q     Now let me also ask you, of course you took the

1 personal history from Mr. Braswell. I believe you met with  
2 him for about two and a half hours?

3 A Correct.

4 Q And looking at that history he gave you and also  
5 looking at -- assuming that he and his wife have been  
6 practicing asphyxiation for some two years where she would ask  
7 him about a fix and assuming further that oftentimes when they  
8 would engage in that process or that conduct in the jacuzzi  
9 and she had given him three signals; one a pat when it was to  
10 suggest to communicate to him in terms of the fix being  
11 applied and the other one where her hand would be on the  
12 bathtub and he would use that as a signal to release the  
13 pressure and assuming further that they would on an occasion  
14 in question that they would -- that they did asphyxiation or  
15 at least had suffocation involved in some three instances  
16 within about a four-hour period, would you have an opinion as  
17 to whether that's -- also assuming that they visited swingers  
18 club, would you have an opinion as to whether her being found  
19 dead on -- as a result of these activities on the day that I  
20 mentioned, would that be consistent with -- do you have an  
21 opinion as to whether that's consistent with erotic  
22 asphyxiation?

23 A Yes.

24 Q And what is that opinion?

25 A I'll go through it in detail. One question that you

1 ask in such cases is what your signals are for stopping. And  
2 if you've not been involved with such activity, you wouldn't  
3 be aware of what these signals are. So it's a way of finding  
4 out veracity.

5 The one signal was a tap like that. And tap meant stay  
6 right where you are, don't go anymore. Second was a pinch. A  
7 pinch meant more pressure. And the third one was limp, limp  
8 means stop. Now it takes time to coordinate these signals and  
9 months. You know, it's like learning how to dance. You have  
10 to get these signals down. And so he traced to me the history  
11 of learning these signals and teaching each other signals.

12 And what he reported was that she would get very mad at  
13 him if he would go limp too soon because then she wouldn't get  
14 the hit at orgasm and so she would get angry, raise her voice  
15 and be mad at him. So he became kind of walking on egg shells  
16 whether he was doing it right or not. The problem with that  
17 system is that a person usually waits until the last minute  
18 and you need to wait more and longer and longer to get the hit  
19 that you used to get and so it's a very dangerous system and  
20 I'd say lethal kind of system that they used.

21 And particularly in a jacuzzi, it's 160 degrees, no one  
22 knows what the physiologic effect of doing this in a jacuzzi  
23 is going to be in terms of the heart and blood pressure and so  
24 on. So it was a very dangerous activity they were involving  
25 themselves in.

1           The history of the swinging and prior lesbian  
2 activities and such, these are consistent with people who do  
3 sexual deviant behavior. What happens is that if you're  
4 involved in one form of forming extra excitement, then almost  
5 always you're involved in others. And so like the dildos, the  
6 swinging clubs, these are people who need high degrees of  
7 excitement in order -- and illicitness, riding the motorcycle,  
8 high degree of excitement and illicitness in order to get  
9 aroused. And you typically see that in individuals who've had  
10 a history of rape. What seems to happen is that when a person  
11 is raped --

12           MS. WEIRICH: May we approach, Judge?

13           THE COURT: You may.

14                   (Bench conference commenced.)

15           MS. WEIRICH: We just talked about this.

16           THE COURT: I believe that's what we just  
17 discussed.

18           MR. W. BAILEY: Oh, I didn't lead him into the  
19 discussion.

20                   (Said bench conference concluded.)

21           THE COURT: Ladies and gentlemen, let me excuse  
22 you for a minute and call you back shortly.

23                   (Jury out.)

24           THE COURT: You know, when I rule and issue  
25 limiting instructions in a ruling, you have a certain

1 responsibility, I think, to step in and stop your witness if  
2 you think the witness is going beyond what I've ruled.

3 MR. W. BAILEY: I understand.

4 THE COURT: You didn't lead him into it, true  
5 enough, but he was going right down that path. He's a bright  
6 man. He's got a degree from Johns Hopkins, for goodness  
7 sakes. He heard what the ruling was. He knew full well. I  
8 specifically mentioned the rape that was not admissible in  
9 front of the jury with regard to what he was told by your  
10 client. And these other matters that he's volunteered, I  
11 specifically stated that with regard to the history that he  
12 received from your client in that two-and-a-half-hour  
13 conversation last night, you could ask him based on the  
14 history that was given, do you think that that history is  
15 consistent with this sexual deviant practice.

16 MR. W. BAILEY: And I asked --

17 THE COURT: And that was clear.

18 MR. W. BAILEY: I understand. I asked him also  
19 some hypothetical questions based on his testimony.

20 THE COURT: And I understand that. And then he  
21 began relating everything to those specific matters that he  
22 was told by your client last night, the tapping the three  
23 things, the dance lessons, the rape, the this, the that, the  
24 lesbianism I don't know where that came from. And so what's  
25 that all about?

1                   MR. W. BAILEY: Well, I asked him about the  
2                   tapping myself. I asked him about the signals, the three  
3                   signals. I asked him on direct about the three signals.

4                   THE COURT: He has obviously been gratuitously  
5                   bringing into his testimony matters that you did not ask him  
6                   about, and I'm sure the doctor full well heard what I ruled,  
7                   the lesbianism and the rape and all these things that are just  
8                   triggers for the jury to say where does that fit in? What are  
9                   we missing here? What have we not been told? Oh, my, there  
10                  must be more to this case. And so at the risk of the doctor  
11                  being asked to step down and the jury being instructed to  
12                  disregard his testimony in its entirety, you need to be  
13                  responsive to the question and conform your answers to the  
14                  ruling that you heard me give 20 minutes ago. And you know  
15                  full well what that ruling is.

16                  MR. J. BAILEY: Would Your Honor just, so that we  
17                  don't get back into that again, would Your Honor just explain  
18                  to Dr. Schwartz what he's not to get into?

19                  THE COURT: I don't need to explain a thing. The  
20                  ruling was pretty clear. I mean, I think you understood it.

21                  MR. J. BAILEY: I understand that.

22                  THE COURT: And I think Mr. Walter Bailey  
23                  understood it. And that is that he's not to incorporate into  
24                  his answers those facts that your client gave him in that  
25                  two-and-a-half-hour interview last night. And I don't know



1     how much plainer I can state it. That's what I stated before.  
2     I told Mr. Bailey he could -- he could make a reference to  
3     that interview and ask if based on that information his  
4     conduct was consistent with this so that that's before the  
5     jury without getting into the specific details that were told  
6     to him by your client.

7             MR. W. BAILEY: I think --

8             THE COURT: And so if we head down that road  
9     again, he's going to be asked to stand down and the jury is  
10    going to be instructed to disregard the entirety of his  
11    testimony.

12            MR. W. BAILEY: Dr. Schwartz, I guess the better  
13    view would be for you to let me have those notes so you won't  
14    look at them and that won't prompt you.

15            WITNESS SCHWARTZ: All right. I'll just put my  
16    notes away.

17                   (Jury present.)

18

19                               DIRECT EXAMINATION CONTINUED

20    BY MR. W. BAILEY:

21        Q     Dr. Schwartz, one thing I want to ask you is, is it not  
22    characteristic -- is it often that these incidences go  
23    unreported?

24        A     That -- the vast majority of these cases are unreported  
25    partly because they wipe the crime scene clean, parents do or

1 family members do because they're ashamed of the sexual act.

2 Q All right. Now one thing I want to ask you, I believe  
3 I asked you based on the hypothetical information that I gave  
4 you and your review of the material that has been admitted  
5 into evidence, I believe I asked you is not -- let's say did  
6 you have an opinion as to whether this is a case of erotic  
7 asphyxiation and I believe you said you did and I believe you  
8 said that it is. Is that a fair statement?

9 A With a high degree of psychological certainty, I  
10 believe that this death was an accident due to erotic  
11 asphyxiation.

12 MR. W. BAILEY: Very well. Thank you.

13

14 CROSS-EXAMINATION

15 BY MS. CARNESALE:

16 Q A high degree of psychological certainty of this death  
17 was due to erotic asphyxiation?

18 A That's correct.

19 Q Are you a psychologist?

20 A I am.

21 Q Aren't you a doctor of science?

22 A I'm a psychologist.

23 Q What is a doctor of science?

24 A A doctor of science is a degree that they give at Johns  
25 Hopkins in psychology and medicine together, and I'm licensed

1 as a psychologist.

2 Q Do you have a medical degree?

3 A No, I don't.

4 Q Do you have a Ph.D. in psychology?

5 A I have a license in psychology, which is called a  
6 doctor of science.

7 Q What type of educational requirement is there for a  
8 license in psychology?

9 A You have to complete a doctoral program in psychology  
10 at a university, which I have.

11 Q Without obtaining the Ph.D. degree?

12 A That's correct. They think of doctor of science as one  
13 above a Ph.D. at Johns Hopkins.

14 Q How many years of training did you receive at Johns  
15 Hopkins?

16 A Five years of training and then two years of  
17 internship.

18 Q Post-college five years of training?

19 A Correct.

20 Q And your expertise is in the area of sexual deviancy?

21 A That's correct.

22 Q Are you saying that Vern Braswell is a sexual deviant?

23 A I'm saying that erotic asphyxiation is a deviant sexual  
24 act.

25 Q And solely based on what Mr. Braswell has told you,

1       you're here to say that he practiced that deviancy?

2               MR. W. BAILEY: Your Honor, to clear the record, I  
3       think we need to talk about the hypothetical facts that I gave  
4       him, not what Mr. Braswell told him.

5               MS. CARNESALE: Well, Judge, he's testified that  
6       what Mr. Braswell told him is the foundation for his opinion.

7               MR. W. BAILEY: Oh, I see, without going into the  
8       specifics.

9               THE COURT: Exactly, yes.

10       Q       I'm not asking you what Mr. Braswell told you. I'm  
11       asking you based only on what he's told you is what you base  
12       your conclusion on; is that correct?

13       A       I base the conclusion on the reports that I received,  
14       the crime scene details and the history given me by the  
15       client.

16       Q       Okay. The reports that you received. What were those  
17       reports, specifically?

18       A       One report I received was a description of the autopsy.

19       Q       Did you receive a copy of the autopsy report?

20       A       Correct.

21       Q       The entire autopsy report?

22       A       That's correct. Another thing that I received was a  
23       description of how the body lied and the details and then I --

24       Q       How the body lied --

25       A       Was lying on the ground at the time.

1 Q After it was pulled out of the bathtub by the  
2 paramedics?

3 A Correct. And then the pictures of the crime scene, the  
4 objects that are sitting on the table over there.

5 Q Which objects on the table?

6 A There's a dildo -- two dildos. There's a strap.

7 Q The sex toys. Not all of the objects that have been  
8 introduced into evidence?

9 A No, the sex toys. And then my interview with the  
10 client.

11 Q So the crime scene photographs, did you receive an  
12 entire copy of each crime scene photograph?

13 MR. J. BAILEY: Your Honor, he wouldn't know what  
14 the entire copy would be?

15 MS. CARNESALE: I'll rephrase.

16 THE COURT: Rephrase.

17 Q How many photographs did you review?

18 A Five.

19 Q Five. And what were -- what was depicted in those five  
20 photographs?

21 A Sheila was lying on the ground. There was fluid coming  
22 out of the mouth. There was piercing of the breasts and of  
23 the belly area and then there was some tape around there from  
24 the, I guess the people were doing the investigation.

25 Q And the five photographs were different variations of

1       that?

2       A     Correct.

3       Q     And that's all the photographs you reviewed?

4       A     That's correct.

5       Q     The autopsy report?

6       A     Correct.

7       Q     And you're not a medical doctor so I take it you're not  
8       a forensic pathologist?

9       A     No, I'm not.

10      Q     Okay. And then your interview with the defendant?

11      A     That's correct.

12      Q     And that interview consisted of two and a half hours  
13      last night; is that right?

14      A     And I believe there was the report from the detectives  
15      that were in the case or something of that sort.

16      Q     Well, something of that sort. Specifically, what was  
17      it?

18      A     I don't recollect.

19      Q     You don't recall?

20      A     No.

21      Q     Did you review that report in preparation for your  
22      testimony today?

23      A     Yeah, there was some 50 or 60 pages of it.

24      Q     Did you read it?

25      A     Yes.

1 Q When did you read it?

2 A I read it over the last two days.

3 Q When were you retained by Mr. Braswell?

4 MR. W. BAILEY: Your Honor, that's inappropriate.

5 MS. CARNESALE: I think it goes toward his  
6 credibility, Judge, and his amount of preparation.

7 MR. W. BAILEY: I don't care. Go ahead. We'll  
8 withdraw it.

9 A I was retained on Saturday so I spent all day Monday  
10 reading.

11 Q When did you arrive in from St. Louis?

12 A Last night.

13 Q And I'm assuming you're being compensated; is that  
14 correct?

15 A That's correct.

16 Q How much do you get paid?

17 A I get paid \$2000 a day for leaving the office, \$1000  
18 for expenses.

19 Q And you left the office yesterday?

20 A Today.

21 Q Today.

22 A Yeah.

23 Q I thought you met with Mr. Braswell last night?

24 A Yeah, but today is my day.

25 Q Okay. So you received a total of \$3,000?

1 A Correct.

2 Q To testify on behalf of Mr. Braswell?

3 A Uh-huh.

4 Q You mentioned when you spoke with Mr. Bailey the water  
5 temperature of 160 degrees. Where did you get that figure?

6 A It was on the report that -- from the crime scene, it  
7 said that they measured the water. It was lower than 160 but  
8 it was turned up to 160.

9 Q What was turned up to 160?

10 A The knob on the jacuzzi.

11 Q The jacuzzi hot tub?

12 A Correct.

13 Q I'm going to pass forward to you what's previously been  
14 marked Exhibit 2. Have you ever seen that picture before?

15 A No.

16 Q Are you aware what that is?

17 A Looks like a jacuzzi.

18 Q A jacuzzi or a conventional home bathtub with jacuzzi  
19 jets or do you know the difference?

20 A They're called jacuzzis. I don't know.

21 Q Do you know the difference between a hot tub and a  
22 bathtub with jacuzzi jets?

23 A I didn't know there was a difference. I mean, there is  
24 a brand name Jacuzzi.

25 Q Do you see a knob on that bathtub that reflects the



1 temperature, which can be adjusted for that bathtub?

2 A No, I don't.

3 Q Would it surprise you to learn that that is the bathtub  
4 in fact that Sheila Braswell was found in after what you say  
5 she engaged in erotic asphyxia with the defendant?

6 A I'm just going on the report that I read.

7 Q You can place that down. Did you produce a report with  
8 your findings with regard to this case on Vern Braswell?

9 A Pardon me?

10 Q Did you generate a report?

11 A No, I didn't.

12 Q Isn't that typically common in a case such as this  
13 where you serve as an expert to produce a report?

14 A It is common, yes.

15 Q Did you ever speak with Sheila Braswell?

16 A Of course not.

17 Q Everything you know about Vern Braswell, his practices,  
18 Sheila Braswell, her alleged practices came from the mouth of  
19 Vern Braswell; is that correct?

20 A And evidence that's sitting there.

21 Q I believe a moment ago when you testified under direct  
22 examination that one of the signs of veracity, I believe is  
23 what you called it, that Mr. Braswell did indeed engage in  
24 erotic asphyxia was the fact that he stated that he and Mrs.  
25 Braswell used signals; is that correct?

1 A That's correct.

2 Q Isn't it true that all of this information, including  
3 that regarding signals as well as everything else can easily  
4 be found in literature and books on the Internet?

5 A No, it's not true.

6 Q It's not true?

7 A The way you ask the questions, you get answers that --  
8 you get trained clinically and being able to find veracity and  
9 pick up lies or inconsistencies in people's reports and so you  
10 ask for excruciating details and you try to look for  
11 inconsistencies. And there was not one time in my interview  
12 that I found inconsistency or a detail that was inconsistent  
13 with another, and so I concluded on the basis of that, that  
14 there's a high degree of certainty that he was telling me the  
15 truth.

16 Q You didn't have any background information on this case  
17 until they contacted you and provided it; correct?

18 A I believe clinical interview is still the best --

19 Q Isn't that correct? Would you answer my question, sir?

20 MR. J. BAILEY: He's trying to, Your Honor.

21 MS. CARNESALE: Judge, he's not. He's avoiding my  
22 question and launching into an explanation.

23 THE COURT: If you would answer yes or no and then  
24 you are welcome to explain.

25 A What is the question?

1 Q Isn't it true that everything you knew about this case  
2 came from what was provided to you either by Mr. Braswell or  
3 through his attorneys; correct?

4 A That's correct.

5 Q Okay. So when you say there were no inconsistencies,  
6 there was nothing to be inconsistent with?

7 A That's not what I said. What I said was that I had  
8 been trained how to do a clinical interview, particularly in a  
9 forensic situation and having worked in a jailhouse, how to  
10 work with the criminal personality and how to be able to ask  
11 questions in a very detailed way to look for inconsistencies.  
12 And I believe that I'm an expert at really picking up people  
13 who are lying or not telling the truth. And I'm telling you  
14 that in my interview, my clinical interview, which is still  
15 the best criteria to evaluate such cases, there was no  
16 incidents of any inconsistencies in the way this man reported  
17 the details.

18 Q Inconsistencies with what?

19 A I would ask one question at one time and I would ask it  
20 a different way at another time. And when you ask the  
21 question, you look for inconsistencies as you're doing that.

22 Q So someone who had had a year and a lot of free time  
23 could not have boned up in this area to avoid such  
24 inconsistencies. Is that what you're telling this jury?

25 A I'm saying that --

1 Q Yes or no, Mr. Schwartz, is then you can answer.

2 A The answer is no, I don't believe he could have  
3 falsified this.

4 Q You stated that based on the fact that those sex toys  
5 were in the home of Vern Braswell, that's what led you to  
6 believe that this case involved erotic asphyxiation?

7 MR. W. BAILEY: That's not --

8 Q And if that's not true, please correct me.

9 A What I said is if you look at scientific literature to  
10 distinguish cases of erotic asphyxiation from suicide or  
11 homicide, one of the most common features that you'll find is,  
12 A, deviant sexual activity other than; and B, erotic toys, sex  
13 toys and a history of sadomasochistic kind of behavior, such  
14 as whips or dildos.

15 Q And those erotic toys would be found in the location  
16 where that type of behavior was taking place?

17 A In the house. That's one of the things you would look  
18 for.

19 MS. CARNESALE: Judge, may we have a moment?

20 Nothing further.

21 THE COURT: Redirect?

22 MR. W. BAILEY: One omitted question on redirect.

23

24

25

REDIRECT EXAMINATION

BY MR. W. BAILEY:

Q Body piercing. What information does that provide you?

A The body piercing is consistent again with scientific literature on cases of erotic asphyxiation, that individuals get involved in that lifestyle oftentimes have whips, chains, and body piercing. And so when you see that, it's very common with people with a history of erotic asphyxiation. It's pain caused to the body and there's a certain subculture that enjoys pain with sex.

MR. W. BAILEY: Very well. Thank you.

RECROSS EXAMINATION

BY MS. CARNESALE:

Q Well, isn't it true actually that those piercings supposedly increase sensitivity? Isn't that commonly a reason why people get those?

A I wouldn't know.

Q You wouldn't know?

A I don't know what the motives are for people in getting piercing.

Q Didn't you just say they get it to enjoy the sensation of pain?

A I said that in the subculture that enjoys pain with sex, it's very common to find body piercing.

1 MS. CARNESALE: Nothing further.

2 THE COURT: You may step down. Ladies and  
3 gentlemen, we'll stop for the day at this time. We will  
4 resume the trial tomorrow morning at nine o'clock. As always,  
5 do not discuss the case in any way overnight. We will see you  
6 tomorrow morning at nine o'clock.

7 (Jury out.)

8 THE COURT: Mr. Bailey, were you about to say  
9 something as I was excusing the jury?

10 MR. J. BAILEY: I actually thought I was going to  
11 rest.

12 THE COURT: Oh, I'm sorry. I didn't know if you  
13 wanted overnight to think about it. That's often the case  
14 when we're at a stopping point, I give you overnight to  
15 consider your options.

16 MR. J. BAILEY: I didn't mean to interrupt you,  
17 Your Honor.

18 THE COURT: No, no. That's fine. You may adjourn  
19 court.

20  
21 (Court was adjourned until 9 a.m.,

22 Friday, December 9, 2005.)

23

24

25

(END OF VOLUME FIVE)